

Testifier List
October 22, 2007

✓ Riki Hokama PLEASE PRINT CLEARLY
✓ Charlie Maxwell

- ✓ 1. MICHAEL J DUBERSTEIN - KIHAI
- ✓ 2. ELISABETH GAPERD - WAILUKU
- ✓ 3. PETE GAPERD WAILUKU
- ✓ 4. JOE FRADIN KIHAI
- ✓ 5. TERI PINTACURA WAILUKU
- ✓ 6. GABY GOUVEIA
- ✓ 7. RICHARD MICHAELS - MAKAHA
- ✓ 8. SALLY RAISBECK - WAILUKU
- ✓ 9. SIMON RUSSELL HAIKU
- ✓ 10. DICK MAYER NUCA
- 11. ~~MARCUS S. GIBSON - KAHANUI~~
- ✓ 12. JUDITH MICHAELS - MAKAHA
- ✓ 13. JEFFREY PARKER - HUELLO
- ✓ 14. JOHN NEUTRUIST KIHAI
- ✓ 15. ISAAC IRM Hall WAILUKU
- ✓ 16. RANDY SMITH HAIKU
- ✓ 17. GREG WESTCOTT HAIKU
- (18. Kahu Charles Kaulawehi Maxwell Sr)
- ✓ 19. NORBER SUSSMAN HAIKU
- ✓ 20. IRENE BOWIE KAHULUI

Cut Pat Boy

Testifier List
October 22, 2007

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- | | | |
|-------|---|--------------|
| ✓ 1. | Vicki McCarty | Lahaina HI |
| ✓ 2. | Masako Westcott | Waipi'o |
| 3. | (Pat Bozette) <small>ant</small> | MAKONA-Haiku |
| ✓ 4. | Karen Chun | Faiea |
| ✓ 5. | David Mogilefsky | Kihei, Maui |
| ✓ 6. | LUCIENNE <small>di na</small> dentie | HUELO, MAUI |
| ✓ 7. | CANDY AWO | Maui DOCAKE |
| ✓ 8. | Bud Clancy | HAIKU MAUI |
| ✓ 9. | Hannah Bernard | Haiku, Maui |
| ✓ 10. | Richard McCarty | Lahaina HI |
| ✓ 11. | Jeannie Duberstein | Kihei, HI |
| ✓ 12. | Robyn Dobruck | Wailuku, HI |
| ✓ 13. | BROKE PORTER | WAILUKU, HI |
| ✓ 14. | MERRILL KAUFMAN | WAILUKU, HI |
| ✓ 15. | John Coppola | Wailuku, HI |
| ✓ 16. | HELEN ALPIDO | WAILUKU |
| ✓ 17. | NIKHILANANDA | HUELO, MAUI |
| ✓ 18. | PAT KEAN / AARP | Kihei HI |
| ✓ 19. | David Johnston | Pukalani, HI |
| ✓ 20. | Lori Vandermeer | Wailuku |

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October 22, 2007

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- ✓ 1. John Cahill Haiku Po Box 1339
- ✓ 2. Tracey Cahill Haiku
- ✓ 3. ~~ROB PARSONS~~ HAIKU ~~PO BOX 1339~~
- ✓ 4. MARK SWEETMAN HAIKU
- ✓ 5. KENNY HULTQUIST LAHAINA
- ✓ 6. River Freedom Wailuku
- ✓ 7. Anne Pileri Wailuku
- ✓ 8. Blake Moore Kihei
- 9. Peter McKenny LAHAINA
- 10. Scott Adams Lahaina
- 11. Mila Adams Lahaina
- 12. GLENN ADOLPHO WAILUKU
- ✓ 13. Manuel M. Fuloloin Pāunala, Hāikey
- ✓ 14. LLOYD FRIEHEL Haiku
- ✓ 15. Kūhea Paracuelles Wailuku
- ✓ 16. Justin Graenstein Wailuku
- 17. Wendi Gordon Kihei
- ✓ 18. (Helena Kim) Robin? Kihei
- ✓ 19. Kimberly Usher Wailuku
- ✓ 20. PAMELA POLLAND Kula

Jul Kaufman →

du Page? →

PRONOUNCED POLAND

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- | | | |
|-------|--|------------------|
| ✓ 1. | BILL ERNST | KULA |
| ✓ 2. | Steve Hensley | Kehei |
| ✓ 3. | KATHLEEN FUKUSHIMA | PUKALANI |
| ✓ 4. | Sandi AMARAL | IKULA |
| — 5. | Mabel Domaes | Kahului |
| ✓ 6. | Victor Pellegrino | Waikapu |
| ✓ 7. | Darrell Tanaka | Haiku |
| — 8. | Daniel Grantham | Haiku |
| — 9. | WARREN BLUM | KIHEI |
| ✓ 10. | (Cam Davis Moss) <small>Gail Swanson</small> | Kihei |
| ✓ 11. | Erin Ivers | MAKAWAO |
| — 12. | Bill KINAKA | Waikapu |
| — 13. | PAUL OLSEN | |
| ✓ 14. | Paul W Skarbo | Paul W Skarbo |
| ✓ 15. | Diana Bergantino | Diana Bergantino |
| — 16. | Gregory Ball | Haiku |
| — 17. | Andrea Peltzer | Kihei |
| ✓ 18. | Karolyn Braun | Kihei |
| ✓ 19. | Kara Johansen | Lahaina |
| ✓ 20. | FANK ZAJAC | HA'IKU |

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- ✓ 1. Marian Zajac Haleku
- ✓ 2. Tom Gage Kilauea
- ✓ 3. Tom Hansen LAHAINA
- ✓ 4. Mauvy King Kihei
- ✓ 5. Zandra Souza Amaral Kihei
- cut 6. (Wilani Kaufman) Makawao
- ✓ 7. Dixie Bongolan Makawao
- ✓ 8. MARCIA GODINEZ KAHULUI
- ✓ 9. Inez Okamura Wailuku
- ✓ 10. Katy Bayly Pukalani
- ✓ 11. William Pyle Pukalani
- ✓ 12. Terry Jakovits Kihei
- ✓ 13. HAROLD "HAP" MILLER KIHEI
- ✓ 14. Barbara Apo Waipoua
- ✓ 15. Jennifer Dempsey Makawao
- ✓ 16. GREG HOWETH LAHAINA
- ✓ 17. JOHN WRIGHT KULA
- ✓ 18. CRIS SOUTH Makawao
- ✓ 19. Kallie Keith-Agaran Wailuku
- ✓ 20. Joycynn Costa

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1. Mary EVANSON
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4. Tamara Paltin
5. JAMES BAKER
6. ~~Steven Gomerle~~
7. Christine Page
8. DON PEPE
9. Dan Cohen
10. ALIEGER KAUD
11. Rosemary S. Robbins
12. Alena Onnellas
13. Emily Pallares
14. Dan McNulty-Huffman
15. Cal. Hayase
16. Danny Lynch
17. HARRIEN AMBROSSE
18. RICHARD TOLIN
19. ROBIE PRICE
20. Bonnie Gadda

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1. Don Reeser
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3. Elorian Rua Tom
4. Nancy Haag
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6. CHAD MEYER
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9. DAN ZOFI
10. ~~DAN~~ SCOTT
11. Caitlin Harrowby
12. ~~SA NEPEO~~
13. Joshua Cooper
14. ALFRED CHING, JR.
15. Jeremiah Naone
16. JESSE Kong
17. Kristen Smart
18. Helen Robell
19. Malia Davidson
20. Leindala Uedder

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October 22, 2007

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1. H.E. James V. Rivera
2. David Diven
3. JOHN LUNDIN
4. Susan Bradford
5. RICHARD PAEL
6. Amanda Mizner
7. Gina Rouse
8. Daniel Kanahole
9. Michael Corcoran
10. Leilani Miranda
11. Duane Kim
12. Myo Muyasaki-Kim
13. John Mahaleona Kaarawaliwali Aguirre
14. ROBERT KING
15. KEOKI RAYMOND
16. Mikahala Helmi
17. JANECA UMAR, PRESIDENT - MAUI CHAMBER OF COMMERCE
18. MARY GROODE
19. SAPHO HENDERSON
20. Puanani Lindsey

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1. EDWIN LINDSEY III
2. ~~SCOTT S. SATTA~~
3. Kim Weaver
4. Amy Kennett - if not here - written statement in
5. EZEKIEL K. MOONIHAWA
6. Barbara Morodian
7. John David Kaina JR.
8. ~~ATA KANAKALE WONG DOCK~~
9. Curen Ohama
10. Stephen West
11. ~~Ron Stewart~~
12. Fern P. Duval II
13. CHARLES WILSON II
14. Foster Ampang
15. Kaleikoa Kaia
16. Lance Hoffer
17. Carrie Ann Shicota
18. PATSY PITTS (is AGAINST FERRY)
19. ~~LEO CARRO~~
20. Prescott Guillermo

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1. Kathy Bungartz
2. Carl Huff
3. GAIL SWANSON
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G. Riki Hokama
Vice-Chair
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Council Members
Michelle Anderson
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Michael J. Molina
Joseph Pontanilla
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Ken Fukuoka

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October 22, 2007

TO: Honorable Brian T. Taniguchi, Chair
Senate Committee on Judiciary and Labor
Honorable J. Kalani English, Chair
Senate Committee on Transportation and International Affairs
Honorable Ron Menor, Chair
Senate Committee on Energy and Environment

FROM: G. Riki Hokama
Council Chair 

DATE: October 22, 2007

SUBJECT: **COMMENTS RELATING TO THE INFORMATIONAL BRIEFING ON THE SUPERFERRY (PAF 07-254)**

Thank you for the opportunity to comment on proposed legislation that will be introduced at the convening of the Second Special Session of 2007 on Wednesday, October 24, 2007. The proposed bill will permit the operation of an inter-island ferry service in the State of Hawaii while an environmental impact statement is being conducted.

The Maui County Council has not had the opportunity to take a formal position on this measure. Therefore, I am providing this testimony in my capacity as an individual member of the Maui County Council.

I continue to maintain that the State government should not allow the Superferry to commence operations without the benefit of an environmental assessment and a possible environmental impact statement. Therefore, I strongly oppose a special legislative session for the Hawaii Superferry.

By Resolution No. 06-78, entitled "OPPOSING THE PROPOSED COMMENCEMENT OF SERVICE OF THE HAWAII SUPERFERRY AT KAHULUI HARBOR", the Maui County Council unanimously resolved that it opposed Superferry operations "pending update of the Harbor Master Plan, preparation of an Environmental Impact Statement pursuant to Hawaii Revised Statutes Chapter 343, and construction of necessary improvements to adequately accommodate current harbor users and the Hawaii Superferry". The Hawaii County Council and Kauai County Council adopted similar resolutions.

Because the State Department of Transportation (DOT) had exempted the Superferry from the normal requirements of the Hawaii Environmental Protection Act (Chapter 343, Hawaii Revised Statutes), the public was excluded from participation in the environmental review process, contrary to usual practices. Thus, the public meetings conducted by the Maui, Hawaii, and Kauai county councils provided the only opportunity for public comment to governmental bodies regarding the Superferry. In all three counties, the testimony was overwhelming in support of requiring normal environmental review for the Superferry.

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In an order on August 23, 2007 and a written opinion on August 31, 2007, the Supreme Court of Hawaii unanimously found that the DOT should have considered the Superferry's potential environmental impacts, concluding that the failure to do so contradicted the Legislature's stated view that public participation in the environmental review process is critical. To overlook this fatal flawed decision by attempting to pass a shortsighted law meant to allow the ferry project to proceed only serves to compound the errors made by the State administration and the Superferry.

Moreover, as both the Legislature and the Supreme Court have recognized, public participation in the environmental review process benefits all parties, including businesses. In fact, little would need to be considered at this point had the entities involved simply made a sincere effort to complete the required studies. Rather, the public observes negotiations among the offending parties behind closed doors, in apparent disregard of the Sunshine Law and principles of open government. To present for public comment at an informational briefing a proposed bill conceived of in this way seems disingenuous, at best. Let us call it what it is, an attempt to circumvent our proven environmental laws in order to circumvent a judicial ruling.

In addition, I agree with observers who have noted that the Superferry issue raises larger questions regarding the pace of growth in our communities and the perception that government favors the needs of the visitor industry, high-end developers, and other outside interests over the needs of hard-working local people. If these issues continue to be ignored by the State government, we may see a social and political revolution of the same magnitude as the 1954 revolution that swept in a new generation of political leaders.

State government is at risk of seeming out of touch with the impact of growth on the neighbor islands. To give but one example, traffic improvements at the intersection of Puunene and Kaahumanu Avenues are ineffective. Traffic congestion has worsened, even prior to the arrival of the Superferry.

The significance of your decision cannot be overstated. I respectfully ask you to respect your allegiance to the law and to the public interest, and neither convene a special legislative session nor further consider this conceptually flawed bill.

Thank you for your consideration of my comments. I would be pleased to answer any questions you may have.

ocs:proj:legis:07legis:07testimony:specialsession_paf07-254_scj

TESTIMONY OF MICHAEL J. DUBERSTEIN

Earlier this year I prepared a study of traffic-and-terminal related impacts of various ferry systems with emphasis on mandated traffic and terminal mitigations.

My report studied 47 existing and proposed ferry systems:

United States ferry systems	35
Canadian ferry systems	4
United Kingdom ferry systems	4
Hamilton, New Zealand	
Indonesia	
Oslo, Norway, and	
Guyana.	

Twenty one ferry systems were currently in operation, twenty four were proposed, and two were defunct; twenty seven can be classified as “fast ferries. Environmental assessment and impact studies—under a variety of titles based on the jurisdiction—were found for all except five of them, and most had both significant traffic and terminal-related issues with specific mitigation recommendations; all but four held public scoping sessions prior to the ferry start-up.

In addition, as an addendum because it's sited specifically by Hawaii Superferry as a model for traffic forecasting of trip generating, I looked at The Great Lakes Lake Express which was covered by NEPA rather than state assessments. Such studies might have helped avoid some of the severe traffic, terminal and revenue problems that turned up in that system's early operations.

I also looked at the environmental assessment process in a number of states that also have extensive ferry systems. Point blank, no state has ever driven such a stake in the heart of its assessment laws as you propose in this abomination. Mind you, I spent a decade as a researcher, legislative assistant and legislative analyst in the U. S. Congress.

Finally, the Governor says following our environmental laws will drive away business. Nonsense, because businesses will go wherever they can make money. But if you pass this abomination, I assure you the word will go out to all who hold the environment sacrosanct to stay away from here, don't visit Hawai'i until we are healthy again.

Malama pono

**Michael J. Duberstein
34 Iliwai Loop
Kihei 96753 891--0597**

LOCATION	PROJECT NAME	RPT DATE	PROPOSED	FERRY TYPE RUNNING	FAST	EIS YES	EIS NO	SCOPING HELD	TRAFFIC ISSUES	TERMINAL ISSUES
Alaska	North Road	2007	X		X	X		X		X
	Terminal Cook Inlet Ferry	2007	X		X	X		X	X	X
	Anchorage MSB Ferry									
	Terminal Petersburg Ferry	2006	X		X	X		X	X	X
	Juneau Access	2000		X			X	X	X	
	Ferry Anke Bay	2006	X		X	X		X	X	X
	Ketchikan Berth 3	2005	X		X	X		X		X
	South Mitkof	2005	X		X	X		X	X	X
	Wrangell	2005	X		X	X		X	X	X
	Prince Rupert	2005	X		X	X		X	X	X
	Seattle									
	Colman Dock	2006		X		X		X	X	X
	Townsend-Keystone	2007			X	X		X	X	X
	Bremerton Bainbridge Island	2007			X	X		X	X	X
	San Juan Island	2005			X	X		X	X	X
	Mukiteo Terminal	2006			X	X		X	X	X
	Edmonds Crossing	2002			X	X		X	X	X

LOCATION	PROJECT NAME	RPT DATE	PROPOSED	FERRY TYPE RUNNING	FAST	EIS YES	EIS NO	SCOPING HELD	TRAFFIC ISSUES	TERMINAL ISSUES
California	Friday Harbor Eagle Harbor East Bay	2005		X		X		X	X	X
	Ferry North Bay	1992 - date	X		X	X		X	X	X
Texas	Ferry Galveston - Bolivar	2001 - date	X		X	X		X	X	X
	Ferry Task Force	2005	X		X	X		X	X	X
Chesapeake Bay	Crisfield MD - Reedsville VA	2005	X		X	X		X	X	X
	Ferry MTA	2004	X		X	X		X	X	X
New York	Staten Island NYC - Boston	2005		X		X		X	X	X
	Terminal	2003	X		X	X		X	X	X
Connecticut	Long Island Sound	2002	X		X	X		X	X	X
	New Haven CN	2005	X		X	X		X	X	X
Connecticut	Rochester NY - Toronto ON	2001	X		X	X		X	X	X
	Intrastate Ferry	2001	X		X	X		X	X	X

LOCATION	PROJECT NAME	RPT DATE	PROPOSED	FERRY TYPE RUNNING	FAST	EIS YES	EIS NO	SCOPING HELD	TRAFFIC ISSUES	TERMINAL ISSUES
Rhode Island	Quonset Point Terminal	2003	X		X	X		X	X	X
Pennsylvania	Erie - Port Dover ON	2002	X		X	X		X	X	X
Massachusetts	Cape Cod (Falmouth)	2001		X		X		X	X	X
	Nantucket Island	2007		X		X		X	X	X
Nova Scotia	Bedford Halifax	2006	X		X	X		X	X	X
British Columbia	Pacificats Gibsons Toronto Terminal	1992 1987	X	X	X		X	X	X	X
Ontario	Toronto Terminal	2005		X	X	X		X	X	X
England	Dover Portsmouth Isle of Wight	2006 1993 1995		X	X	X		X	X	X
Scotland	Gourock - Dunoon Merak - Bakaaheni Terminal Extension	1997-1999		X		X		X	X	X
New Zealand	Hamilton Fjord City Ferry Terminal	2005	X		X			X	X	X
Norway	Oslo	2005	X		X			X	X	X
Guyana	River Services Study	1990		X			X		X	X

pamela polland

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October 22nd, 2007

Testimony to representatives from Hawai'i State Legislature:

and the Aloha *your time* ~~hope~~ *TRUST* kākou, 'o Pamela Polland ko'u inoa. I appreciate this opportunity to share my views, and also to remind you of the gravity of THE LAW. I ~~hope~~ you are here to take the public's concerns seriously.

When the Supreme Court ruled to uphold Section 343 dash 5 of the Revised Statutes, that ruling **INCLUDED** that the Superferry could not operate until an environmental assessment was complete and accepted.

The Director of the Department of Transportation, Governor Lingle and Hawaii Superferry Incorporated are, **in concert**, seeking to violate this clearly stated law and the ruling that applies it.

Local journalists tend to label someone like me as an "environmentalist", as if that were a bad thing, or some kind of noisy minority, but to me, it's a simple matter of common sense to **CONSIDER** the inherent dangers of allowing this new, un-assessed and very different kind of transportation business to enter our waters (and our harbors) without a full EIS. And it's even **MORE** disturbing that the Legislature would consider creating an "end run" around the courageous, recent Supreme Court ruling.

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pamela polland

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The Legislature passes laws. The courts decide cases. When the Legislature seeks to overrule a court, the Legislature is acting outside its authority and violating the separation of powers requirement.

Doesn't such action qualify as "UNCONSTITUTIONAL"? Aren't we getting enough of that from the Bush Administration? The media seems to be playing up what a bad reputation Hawai'i is getting from this issue. I ask that you consider your own personal reputations, along with that of the State you represent when you, as the Legislative body, teeter on the brink of unconstitutional behavior. Please do NOT let this be your, or our State's legacy just because the Governor chooses it as hers. Abandon this activity by adjourning any special session that may be called, and let the current law – (and the rulings which support it) - stand. Mahalo.



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October 22, 2007

Members of the Senate and House
The Twenty-Fourth Legislature
Special Session
Hawaii State Capitol
State of Hawaii
415 South Beretania Street
Honolulu, HI 96813

Re: Senate Bill to Permit Hawaii Superferry to Operate Without
Required Environmental Assessment and Environmental Impact
Statement

Dear Members of the Senate and House of the Legislature of the State of
Hawaii:

We ask that you refuse to agree to convene in Special Session and that
you vote against the Act to permit the Hawaii Superferry to operate prior to the
preparation of the Environmental Assessment ("EA") and Environmental
Impact Statement ("EIS") required by law, for the reasons that follow:

**A BY VOTING FOR THE BILL YOU ENDORSE FALSE
STATEMENTS**

The Act begins, in Part I, Section 1(a), with several false statements
about Chapter 343 as it applies to the Hawaii Superferry litigation.

First, the Act states that: "the existing circumstances, specifically the
construction and completion of harbor improvements and the subsequent
operation of the Hawaii Superferry for a limited period of time, present a
unique situation." This is a false statement. The Hawaii Supreme Court has
successfully addressed situations similar to this on numerous occasions in the
past, from 1982 until the present. See Kepoo v. Kane, 106 Haw. 270, 103 P.3d
939 (2005); KSOA v. County of Maui, 86 Haw. 66, 947 P.2d 378 (1997) and
Pearl Ridge Estates v. Lear Siegler, 65 Haw. 133, 648 P.2d 702 (1982), for
examples.

Second, the Act continues: "Seldom, if ever, has a judicial determination
overturned harbor improvements and business operations that were previously
authorized by the government and approved by the lower court approximately

two years earlier.” This too is a false statement. See Kepoo v. Kane, *supra*; KSOA v. County of Maui, *supra* and Pearl Ridge Estates v. Lear Siegler, *supra*.

Third, the Act also states: “Such an occurrence is not explicitly contemplated in chapter 343, is not consistent with the intent of the legislature, and as such, the policy that should be adopted under law must be amended and clarified. This statement is also false.

The “Findings and purpose” of Chapter 343 is found in HRS § 343-1, as follows:

The legislature finds that the quality of humanity’s environment is critical to humanity’s well being, that humanity’s activities have broad and profound effects upon the interrelations of all components of the environment, and that an environmental review process will integrate the review of environmental concerns with existing planning processes of the State and counties and alert decision makers to significant environmental effects which may result from the implementation of certain actions.

It is the purpose of this chapter to establish a system of environmental review which will ensure that environmental concerns are given appropriate consideration in decision making along with economic and technical considerations.

This system of environmental review is protected by the Hawaii Constitution in Article XI, Section 9, that states as follows:

Each person has the right to a clean and healthful environment, as defined by laws relating to environmental quality, including control of pollution and conservation, protection and enhancement of natural resources. Any person may enforce this right against any party, public or private, through appropriate legal proceedings, subject to reasonable limitations and regulation as provided by law.

All persons have the right to enforce this Constitutional right of action assuring proper environmental review in this State. KSOA v. Maui County Council, 86 Haw. 66, 947 P.2d 378 (1997).

The purpose of having an EA and an EIS is to “alert decision makers [including Legislators] to significant environmental effects which may result from the implementation of certain actions.” HRS 343-1. Here, Senators and House Members have no EA to alert them to the significant effects of allowing the Superferry project to be implemented. In this instance, Senators and House Members are acting with blinders on.

Senate and House Members want to overrule the decision of Circuit Judge Joseph E. Cardoza, after a four-week trial, finding and concluding that the implementation of the Hawaii Superferry project will cause irreparable harm. And Senate and House Members want to take this action at the request

of the losing parties in that case.

The entire point of environmental review is to alert decision-makers, including Legislators, to the significant adverse consequences of the action before them, prior to implementation. This Legislative intent has served Hawaii well for decades. The Courts have refused to allow the implementation of projects in the past until environmental review takes place. See Kepoo v. Kane, supra; KSOA v. County of Maui, supra. The Courts have voided approvals for projects in the past until environmental review takes place. See Kepoo v. Kane, supra; KSOA v. County of Maui, supra and Pearl Ridge Estates v. Lear Siegler, supra. The Courts have prevented the further implementation of partially commenced projects in the past until environmental review takes place. See Kepoo v. Kane, supra; KSOA v. County of Maui, supra. There is no reason, in this instance, to attempt to strip the public of its Constitutionally protected right of environmental review that is only meaningful if it takes place prior to project implementation.

The Act continues with a variety of false statements about how and why the Hawaii Superferry project is in the public interest.

First, the Act falsely represents that its subject matter is a “large capacity ferry vessel company to provide inter-island ferry service between the islands.” This effort to attempt to show that the Act has general application instead of being special legislation to benefit one business, Hawaii Superferry, Inc., fails. Any rational analysis of the Act as a whole makes it abundantly clear that this is special legislation unconstitutionally overruling Court decisions to allow Hawaii Superferry to operate before environmental review has taken place. I will not engage in this falsehood and will refer to Hawaii Superferry as the subject of this Act throughout this letter.

Second, it is not true that Hawaii Superferry emits less carbon emissions when compared to inter-island aircraft. In fact, Hawaii Superferry burns three (3) times more fuel per passenger on an inter-island route than an inter-island aircraft.

Third, it is pure speculation to allege that agricultural produce would suffer less heat damage in transit on the Hawaii Superferry, resulting in higher quality produce at a lower cost. Hawaii Superferry has already had an adverse impact on agriculture. At Kahului Harbor, Young Brothers was forced to demolish a warehouse, to make way for Hawaii Superferry, in which agricultural produce could be held out of the sun. Now that agricultural produce must be stored on the docks, where it is subjected to outside weather conditions, the produce is suffering from heat damage, as a direct result of the Hawaii Superferry project.

Fourth, Hawaii Superferry does not encourage growing products on outer-islands for Oahu markets thereby fostering diversified agriculture, meeting a constitutional mandate. The truth is that the lack of adequate or meaningful agricultural inspections by Hawaii Superferry jeopardizes diversified

agriculture on Maui. Three pick-up trucks, visibly weighted down in the back because they were collectively loaded with approximately 1,000 imu stones, were not inspected by Hawaii Superferry. These pick-up trucks were about to board for Oahu when a tip to DLNR DOCARE officials led to the impoundment of the vehicles.

Fifth, there is no factual support establishing how or why Hawaii Superferry is a real and innovative alternative mode of transportation or how or why Hawaii Superferry supports the state's goal of promoting a sustainable future. This is pure general speculation, without consideration of the significant adverse impacts caused by the Hawaii Superferry project.

Sixth, the Act later recites that Hawaii Superferry has a "unique nature and critical importance," however there is no factual support for these allegations. This is pure general speculation, without consideration of the significant adverse impacts caused by the Hawaii Superferry project.

Part I, Section 1(d) of the Act states that its purpose is to facilitate the establishment of the Hawaii Superferry and, at the same time, to protect Hawaii's fragile environment. The Act delegates the duty "to protect Hawaii's fragile environment" to the Lingle Administration, the same Administration that pursued the illegal exemptions in the first place and currently continues to defend those exemptions. This is an inappropriate delegation of the responsibilities of the Legislature. The Legislature is the only body with the power to enact legislation to permit Hawaii Superferry to operate without any environmental review. If the Legislature is to approve this action, the Legislature has the direct responsibility for including conditions of operation within this Act assuring that Hawaii's fragile environment is actually protected.

B ENVIRONMENTAL REVIEW AFTER PROJECT IMPLEMENTATION IS MEANINGLESS REVIEW

The Act renders the preparation of an EIS meaningless by deleting all of the "action-forcing" provisions of Chapter 343 for one business, Hawaii Superferry. Mitigation measures are not developed until after the project has been implemented and irreparable harm has already been caused. Decision-makers are ordered to approve the project before they have been alerted to the impacts of the project. This is the height of environmental irresponsibility by the Legislature.

The Act states that immediate operation of Hawaii Superferry is in the public interest and that it would be in the public interest to allow the Hawaii Superferry to operate while the EA and EIS are being prepared. There are no facts to support these allegations. This is pure general speculation, without consideration of the significant adverse impacts caused by the Hawaii Superferry project. These findings would overrule the decision of the Hawaii Supreme Court in Citizens for the Protection of the North Kohala Coastline v. County of Hawai'i, 91 Haw. 94, 979 P2d 1120 (1999). In that case the Hawaii

Supreme Court held that the procedural injuries or harms that occur when the environmental review process takes place during or after implementation of a project are as follows:

- (a) The EA would “be used to rationalize or justify decisions already made”, at a time when there is even greater inflexibility,
- (b) “After major investment of both time and money, it is likely that more environmental harm will be tolerated” and
- (c) “When project momentum becomes irresistible, options are closed and agency commitments are set in concrete, there is a risk of post hoc rationalizations to support actions already taken”.

An EA or EIS prepared after the Hawaii Superferry Project has already been implemented violates the Constitutional Environmental rights of the public, violates the purposes of Chapter 343, defeats the entire point of preparing an EA or EIS and causes the “procedural injury” recognized in the Final Judgment of the Hawaii Supreme Court in The Sierra Club v. The Department of Transportation of the State of Hawaii, ___ Hawai’i ___, ___ P.3d ___ (August 31, 2007).

C THE ACT IS UNCONSTITUTIONAL

The Act, no matter what efforts have been made in its drafting to obscure its true effects, is unconstitutional in multiple fashions. The Act requires state courts to exercise their judicial power in a manner that violates Article III and the Due Process Clause.

The Act does not really adopt a new policy or clarify or amend existing law. In truth, the Act attempts to effect the overruling or vacating of the Final Judgment of the Hawaii Supreme Court in The Sierra Club v. The Department of Transportation of the State of Hawaii, supra, and the Decision and soon to be entered Final Judgment of Circuit Judge Joseph E. Cardoza requiring the preparation of an EA and triggering the “non-implementation” requirements of Chapter 343 with respect to the Hawaii Superferry project as of February 23, 2005.

This Act does far more than make the law. This Act unconstitutionally applies the law in violation of the separation of powers doctrine because of its retroactive effect, its application as special legislation to one business, Hawaii Superferry, Inc., and because of its attempt to overrule or vacate Final Judgments and Decisions of the Hawaii Supreme Court and the Second Circuit Court.

Sincerely yours,



Isaac Hall

Testimony
Tony Fisher / Pat Kean
AARP

Submission to hearing on Super Ferry Monday Oct 22nd, 2007

Tony Fisher, President of the Maui Chapter of the AARP states it is the position of the organization the Super Ferry sail while an EIS is conducted. Tony is concerned Maui Tomorrow and the Sierra Club are failing to come to grips with the impact loss of this service will have on senior citizens and physically disabled on Maui and Hawaii in general.

The AARP submits the Court did not determine a *finding in fact*, the decision by the Supreme Court of Hawaii and Justice Cardozza was centered on *public concern*.

Mr. Tony Fisher and Pat Kean have economics degrees. Mr Kean is also a licensed Nurse, has operated a commercial fishing boat for 18 years, and was employed by British Columbia Ferry Corporation for three years.

Frail Elderly, Physically Disabled, and individuals seeking medical care not available on Maui: *Tony Fisher is of the opinion the ferry should be allowed to operate in order to ascertain its impact. Mr. Fisher is worried older, infirm, and those requiring life saving operations have been ignored in this debate.* Thousands of senior citizens and physically disabled confined to wheel-chairs avoid using airlines due to difficulty obtaining an appropriate seat, or have to be carried in an embarrassing manner to one. On the Super Ferry it's a matter of taking a lift equipped van, or bus, use an elevator to the passenger deck, catch the sights, including whales, and roll off at their destination.

Economic considerations: In Sunday's Maui News the shipping lines announced a 7.5% general increase, and a whopping 15% jump for small loads. Unfortunately this is a sign of things to come. Oil price is skyrocketing and due to international events, economic expansion in China and India, a weak US dollar, and speculation it could reach \$120 a barrel by late next year. In addition **Mr. Kean who minored in History attests that America has not faced such a serious set of economic and global political circumstance since 1929-34.** US Business cycle/demographics, and sub prime mortgage bust points to a severe recession starting soon and extending well into the next decade. Hawaii's unemployment rate is going to reach between 8 and 9% by late 2011 as tourism slows. Real disposable income will be 20% lower in real terms by the same date. Any service that can save Hawaii's citizens money will be a positive.

Stagflation/ inter-island travel cost and shipping: Inflation now close to 6% per annum in real terms will pass 10% within two years and slowly diminish after as negative economic growth takes hold. As was the case between 1969 and 1981, wages and incomes will lag significantly in real terms.

In a high inflation, high unemployment environment a more efficient means of transportation and cargo shipping is a huge positive. As the President of Hawaiian Airlines, Suing Go, states: ticket price will return to pre-fare war price and a *little more* afterwards. This points to \$120.00 average inter-island fare within two years, and due to inflation over \$150.00 two years after that. Applying the same inputs the Ferry will be \$80.00 surcharge included and \$105.00 four years from now.

Maui Tomorrow and the Sierra Club have misled the public.

What the S.Club and Maui T. state.

PHD Scientists.

Whales in danger.

Negligible impact.
Nobel Laureate from the
Pacific Biological Station
Departure Bay BC states
Super Ferry poses a lower
danger due to design.

Increased Pollution.

Boeing Aircraft burn
2.5 times the fuel per
passenger mile.

Invasive Species.

UOH, NASA, NOAA all
claim weather has much
larger impact 1000's to one.

Crime/ Maui Council

Should have contacted MPD
Per Capita Maui major crime
rate similar to Oahu's. Only
Prostitution is greater (Navy)

Traffic problems.

Why did M. Tomorrow draw
on an *expert* who was never
employed by a Ferry business?
Washington State, BC Ferry,
NY Ferry, all had experts who
claim 15 to 20 min clearance.

Mr Kean contends Maui Tomorrow and the Sierra Club have been the agents inflaming the public. These professional activists have created the strife on this island by their constant misrepresentation of facts. The level of deceit has reached such a point *condemning this group publicly and removal of theirs special tax category is warranted.*

It is said ignorance of the law is no excuse. It is also true attempting to use propoganda to *enhance ignorance* should not play any role in fashioning new law. Hawaii's environmental law must be re-written. It is clear the Supreme Court on Aug 23rd 2007 expanded this law's role beyond its original intent as an avenue for sober public input. It is now a situation where individuals or businesses are considered guilty until proven innocent contrary to the Constitution. It is now a situation where mere hearsay and innuendo can be used at will by nefarious individuals, with a Maui Yesterday mindset, to create the public concern necessary to trigger an EIS. It is clear **the new law should require peer reviewed science by advocacy groups that result in finding of fact by a court, not just artificially pumped up public concern.**

Pat Kean

Kihei



808-283-3886

Background for Pat Kean

-Economics Degree Simon Fraser University

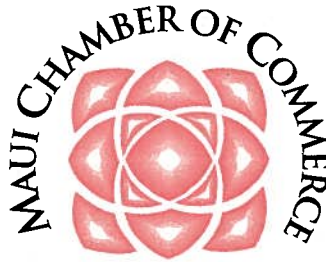
-Nursing Degree Malaspina College-University

-Served in Canadian Army in Cypress and Europe 1972-73

-Captain of a commercial fishing boat, West Coast and North Pacific for 18 years

-I am 1/8th Hawaiian with family roots on the Big Island.

I worked for the BC Ferry Corporation for three years one of my duties was traffic control.



OUR BUSINESS IS MAUI BUSINESS

October 22, 2007

Senate Combined Committee Meeting on
Judiciary & Labor, Energy and the Environment, and
Transportation and International Affairs

Re: Testimony in Support of the Hawaii Superferry

Dear Chair Brian Taniguchi and Committee Members,

Thank you for coming to Maui today and hearing testimony on this issue. I'm truly sorry that these meetings had to be scheduled with such short notice, as many business people are not able to attend as a result, and appreciate your time.

On behalf of the Maui Chamber of Commerce and its over 940 members, I am testifying in support of reasonable legislation to allow the Hawaii Superferry to operate while the environmental assessment is conducted.

The Maui Chamber of Commerce has continued to support the Hawaii Superferry because it's good for business and our economy. We have stories from many businesses, representing various industries, who planned on utilizing the Hawaii Superferry to bring fresher products to market, to reach new markets or expanded markets, to obtain supplies from distributors and vendors faster, to move vehicles and heavy equipment quicker and more cost effectively, to reduce shipping and delivery costs, and more. For these businesses, the Hawaii Superferry represents additional venues for commerce, transportation options, and cost savings, so desperately needed by all businesses in Hawaii, particularly small businesses.

We have been involved while concerns over the environment were discussed and feel that the Hawaii Superferry is a competent company who is and will continue to address the communities concerns. They have taken proactive measures and broadly published information to protect the environment and keep the public informed. And, as with any new system, modifications may need to be made once operational, however, we believe the Hawaii Superferry will make necessary medications for the overall good of the operation and the communities they serve.

While the Maui Chamber of Commerce fully supports an EIS for Kahului Harbor, it's our understanding that the community will receive an EIS through the Harbor's Master Plan. Therefore, we feel it's important to allow the Hawaii Superferry to operate during the Environmental Assessment with reasonable regulations and recognition of the impacts caused by other harbor users as well. Regulations should be fairly and uniformly applied.

Lastly, we've been long been concerned with the negative economic impacts if the Hawaii Superferry wasn't allowed to operate, recognizing that this is a much bigger issue than one company's operation. Sadly, it has gotten to this point, which should lead us all to question process, and has added to the strong anti-business sentiment that plagues Hawaii. Businesses and the world are now watching to see how this situation is resolved. From our standpoint, we're looking to the legislature to make this right.

Therefore, we ask that reasonable legislation be enacted in special legislative session that allows the Hawaii Superferry to operate while the Environmental Assessment is conducted.

Sincerely,

Pamela Tumpap
President

Richard McCarty
P.O. Box 11209
Lahaina, HI 96761

(808) 661-7293

I AM OPPOSED TO HAVING A SPECIAL SESSION OF THE LEGISLATURE TO CONSIDER ACCOMODATIONS FOR THE SUPER FERRY

I AM OPPOSED TO ANY CHANGES TO THE PRESENT ENVIRONMENTAL LAWS TO ACCOMODATE THE SUPER FERRY

THERE MUST BE A FULL, COMPLETE AND HONEST EIS PRIOR TO ALLOWING THE SUPER FERRY TO OPERATE

1. The Governor is using the threat of litigation by the Superferry to get the legislature to react out of fear. The Superferry is being allowed to use the strong-arm tactic of threatened litigation to get what it wants at the expense of the environment. **We should not negotiate with or accommodate someone using terroristic threats.**

The threat of litigation is not a real threat, as the courts can rule that it would be against public policy to let the Superferry recover from the State.

Before the legislature reacts out of fear of litigation, there should be a complete analysis of whether this is a real or an imaginary threat. Does the State have any real significant exposure?

2. **The EIS process is not just a formality.** Everyone is pre-supposing that the Superferry will eventually be allowed to operate, and that the EIS process is merely a formality. Open-minded and fair analysis, however, shows that it is more likely that the EIS will not allow the operation of the Superferry as currently proposed. Since that is at least a possible outcome, the Superferry should not be allowed to start up the service and then have to discontinue it later. The Superferry has already announced that it cannot or will not operate if mitigation measures are required.

3. **The Superferry is likely to fail**, even if help is given by the proposed special legislation. The people of the State are not likely to support any business which presents itself as a public bully which does not have any respect for the environment and will cut corners and make threats to get its way.

What if the Superferry fails in spite of assistance? The legislature and its members will have disgraced themselves for no good reason.

4. **Having the Superferry is not of such a great benefit to the public** that special legislation should be contemplated. Nothing of real social significance is lost if the Superferry does not operate.

It is of much greater benefit to the public that GO Airlines continue service in Hawaii. Will the legislature pass special legislation to help GO Airlines if it has to curtail service? It is keeping fares low and provides additional service which is superior to that proposed by the Superferry.

Tamara Paltin

From: "Tamara" <Paltint001@hawaii.rr.com>
To: <sens@capitol.hawaii.gov>; <reps@capitol.hawaii.gov>; <Governor.Lingle@hawaii.gov>
Cc: <tamara@savehonolua.org>
Sent: Monday, October 22, 2007 10:24 AM
Subject: Impeach the Governor

As a taxpaying resident of Hawai'i, I am outraged that a special session has been called as though this private enterprise is our island chains top priority! The case of the superferry has already been decided by the highest court, they need to do an EA/EIS and environmental law is clear they can not operate until it is done. The grey area has been interpreted by the highest court. If you do not understand the gravity of attempting to change this very important law, then you should not really be up there.

The underlying want of the people--not the businesses, but the people of our state is a more convenient and efficient way of travel/commerce. That is the goal unsuccessfully, trying to be achieved by the superferry. If the Governor had called a Special Session to reach our goals for more efficient commerce and transportation as a state, by improving existing methods or considering other alternatives, that would be completely fair and pono. This is not the case, the Governor has made claims that the superferry must be allowed to do their business here with restrictions that are acceptable to them. I want to raise the question, is she the governor of Hawaii or of the superferry?

The Governor is clearly overstepping her bounds and someone needs to keep the Executive Branch of government in check, this is why I'm requesting that you impeach Lingle. She is involving various government agencies in an illegal conspiracy and it needs to end now unless you are prepared to fight a civil revolution. This case highlights the need for independance and home rule it brings to light Hawaii's infamous past with illegal conspiracy and the need to set things right once and for all. Souki has said the superferry is being made into the scapegoat for infrastructure and other frustrations the neighbor islands are facing, that the superferry was being singled out, well now it is really being singled out for special treatment by the Governor herself. I would hope those who were against the singling out of a private enterprise remember what they said and do not reverse their stance that business should not be singled out for special treatment.

By allowing the superferry to sail, in essence you will convey that businesses that come to Hawaii do not have to follow environmental law, we will change it to suit business. Based on the current conditions, in comparison to when traditional Hawaiian stewardship is in place, this can only lead to ecological disaster.

10/22/2007

Tamara Paltin
4790 L. Honoapiilani Rd
Lahaina, HI 96761
808-870-0052

To the Hawaii Legislature:

You are proposing a blatant attack on democracy, and the constitutional principle of separation of powers. You seem to want to eliminate the function of the judicial branch in Hawaii, and just have legislative and executive branches of government.

Article 3, Section 1, of the Hawaii Constitution, which you all took an oath to uphold, says that the powers of the legislature must be consistent with the Constitution of the United States. The US Supreme Court ruled, in a case called Plaut v. Spendthrift Farm (514 US 211), that for a legislative body to overrule a final judgment of the highest court in the jurisdiction is a clear violation of the constitutional principle of separation of powers.

The final judgment of the Hawaii Supreme Court was not an injunction. It just said that the Superferry Company has to *proceed* under our main environmental law, HRS 343. That would set the project back, but would not enjoin it from eventually happening. All it takes to put the Superferry on hold for awhile is money.

The Maui court was forced to issue an injunction because Superferry Company refused to comply with the final decision of the Hawaii Supreme Court. Superferry Company refused to come up with the money to put the project on hold.

Pass this legislation, and the Superferry Company, along with the Dept. of Transportation, are just going to end up back in court, possibly for years. And, I believe the bottom line is that the courts will not let you get away with this. –Because this is America, and the Kingdom and State of Hawaii – not some communist bloc country back in the 50s.

#####

**Written version of oral testimony.
Hawaii State Senate Hearing, Maui
October 22, 2007**

**David Mogilefsky
2751 Kauhale Street
Kihei, Hawaii 96753
(808)891-1602**

Testimony on Hawaii Superferry Bailout Bill
Karen Chun, 87 Lae St. Paia Maui HI 96779. Phone: 283-3049

Thank you, Senators for coming to Maui to hear our concerns. My name is Karen Chun

There's a mother whale who brings her baby each year right between Kahului Harbor mouth and the 2 mile buoy. I think they hear the slow-moving barges and get out of the way. We paddled right over them and never saw them because they hang out 12 inches below the water without moving. My stroker actually hit the baby with his paddle. But they don't have experience with 34 knots. The Superferry will run right into them and kill them. And my heart will be broken.

This law is flawed. Last night in a few hours, I made a 2 page list of outright lies, bad science and flaws with unintended consequences in it.

The 50 pages of this law would need a month at least to find all the errors and implications. Rushing it through is irresponsible.

To let Lingle set mitigations is crazy. She's demonstrated that her idea of a good mitigation is NO mitigation.

At the very least the **Maui Tomorrow Conditions should be adopted.**

And Parking Lots should be provided on each island. On 'Oahu passengers parked their cars on residential streets. Here on Maui we had people parking at our already overcrowded airport parking lot as well as shopping center lots. It is not fair to dump this problem on our merchants.

Posting bond against damage is a good idea. But **how are we going to prove that HSF was the one who hit a whale we see floating dead or that HSF introduced the invasive specie to Maui?**

This law **opens the door for any governor to give the go-ahead for a project without doing an EIS first** because right there in the first paragraph of the law it says that when this happens, "it is not the intent of the legislature" to have the EIS requirement stop them from operating. You've just gutted HRS 343..

The task force is a joke. **The Task Force should have 3 members from each island HSF will go to appointed by the County Council of that Island ...PERIOD.... and it should have the power to shut down operations instantly if any negative effects are seen.**

If the Superferry operates without an EIS, it will inflame the neighbor islands and there will be massive protests. On Maui we've trusted the judiciary and we've trusted you to protect us from Lingle's greed. With Lingle's Unified Command with their masked, armed men and military with machine guns, we could see a Kent State type incident here. **One of Lingle's storm troopers with their finger on the trigger will make a mistake, get excited and then...someone will die.** It will be on the legislature's head as well as Lingle's if this bill passes.

So I am begging you:

**If Lingle calls a special session, don't pass this bill.
Use the special session to IMPEACH LINGLE.**

False Statements Made in the Proposed Superferry Bailout Bill

1. The title is not descriptive.
2. We all know this is a special interest bill being passed so HSF can continue flouting HRS 343. By pretending it is a bill for “large ferries”, you open the door to any company coming into Hawaii and starting a ferry service prior to doing an EIS. Probably no one will because they, unlike HSF, know that the economics just don't make sense. But you are leaving the door open. I also doubt that any judge would believe this isn't a bailout bill for one specific company and therefore unconstitutional. So this subterfuge really isn't necessary.
3. Section 1(a) Paragraph 2: **“approved by the lower court approximately two years earlier.”** No lower court approved it. They simply declined to hear the case based on plaintiff standing. Subsequently this was overturned.
4. Section 1(a) Paragraph 2: **“such an occurrence is not explicitly contemplated in chapter 343, Hawaii Revised Statutes, is not consistent with the intent of the legislature, an as such, the policy that should be adopted under law must be amended and clarified.”** The law was written ESPECIALLY for a new project. Saying that this situation is not “explicitly contemplated” is nonsense. Saying the legislature didn't intent that large ferries do an EIS before commencement of operations is simply not true.

If you mean a situation where the Governor deliberately flouts the law, a timid judge rules no standing when the State is sued and subsequently that judge is corrected by the Appeals Court and the Governor is told to do an EIS – well this is EXACTLY what the law was written for.

If you pass this part of the law, you are basically saying that any time Gov. Lingle (or any governor) wants to ignore HRS 343, she will get away with it because “It is not explicitly contemplated” that the governor will ignore HRS 343.

5. Section 1(a) Paragraph 3: **“furtherance of the legislature's goal of promoting a sustainable future for its residents, a large capacity ferry vessel company would also utilize technology that produces less carbon emissions when compared to inter-island aircraft transportation with the same carrying capacity.”**

This is utter nonsense. Since when would you transport a car via airplane? If you compare passenger fuel use between interisland air and HSF, the airplane uses LESS fuel per passenger mile than HSF and is thus emits less CO₂. The HSF goes about 3 times as fast as an interisland barge. Since fuel consumption goes up with the cube of velocity, HSF will use 27 (TWENTY SEVEN!) times as much fuel and put 27 times as much carbon into the atmosphere. HSF is BAD FOR SUSTAINABILITY and BAD FOR GLOBAL WARMING. And this bill's statement is BAD SCIENCE.

6. Section 1(a) Paragraph 3: **“between islands in a very short period of time”**. 3 hours instead of 9 hours. Not a real big difference when you take into account that HSF will arrive after the morning markets which is times wrong for our farmers.
7. Section 1(a) Paragraph 3: **“produce...lower cost”** Our farmers and business people testified that since they had to send a driver over with their produce, wait until the next morning for the

market (which they missed due to the HSF coming into 'Oahu in the afternoon) and also because there is no way to come back without spending the night, that this would be considerable more expensive than shipping via Young Brothers.

8. Section 1(a) Paragraph 3: **“ferry...would foster diversified agriculture...”** This statement is simply not backed up with any facts whatsoever.
9. Section 1(a) Paragraph 3: **“immediate operation of...ferry...in the public interest...continue...while environmental impact statement are conducted”** There is no evidence to support this statement.
10. Section 1(a) Paragraph 6(1) Oversight Task force has no power, is composed in the great majority of Lingle appointees.
11. Section 2(b) Sets no time limit on completing EIS. Makes no provision for HSF to pay for damage it causes because and EIS wasn't done first. Makes no provisions for halting HSF, if it turns out it is creating serious damage.
12. Section 2(c)1 **“critical importance of the inter-island ferry service”** There is no critical importance. We have lived without this ferry service ever since the Hydrofoil went bankrupt and we can continue living without it while it does an EIS. This is just nonsense.
13. Section 2(d) **“at the same time, protect Hawaii's fragile environment”** This is so despicably hypocritical, that it needs to be removed in order for the judge who is going to be asked to strike this law down as unconstitutional will probably have a heart attack laughing so hard at the sheer. brazen baloney.
14. Section 3. If the EIS is found lacking, HSF can continue operating. There is no incentive ever to do a real EIS with effective mitigation measures.
15. Section 4 does not state what measures Governor Lingle is to require of HSF. Since her original bill contained absolutely NO MITIGATION measures, one assumes she will likely impose NO MITIGATION MEASURES. This leaves the environment and neighbor islands completely unprotected.
16. **All drafts of the EIS, comments, review, and notices of hearings or meetings shall be posted prominently on the State website so that the public may access all relevant documents easily.**

(In the past, DOT has sent 1 copy to the library where it is too expensive for us to access and copy it. It is extremely important that the EIS and all associated events and documents be posted prominently and quickly on the State Website.)
17. **“(e) All statemenst and other related documents shall be made available for inspection by the public during established office hours.”** Change this to: **“(e)All statements and... shall be posted on the State Website expeditiously and prominently.”**
18. **“(f) The office shall be responsible for the publication of the notice of availability...”** should be changed to **“(f)The office..... AND BY POSTING PROMINENTLY ON THE STATE WEBSITE”**
19. (g) add **AND BY POSTING PROMINENTLY ON THE STATE WEBSITE”**
20. (i) shall commence as of the date notice of availability of the draft statement is intially issued”
Insert **AND POSTED PROMINENTLY ON THE STATE WEBSITE**
21. Section 12. The majority of the task force is Lingle appointees. Lingle appointees need to be the minority. There should be an equal number of Task Force members from each island appointed by each island's county council. Lingle's guys can come to meetings in case anyone wants to ask them a question but don't get to vote.

ADD THIS



Wendi Gordon

Superferry Comments

First, thank you for making the effort to come to the neighbor islands and listen to our concerns. I hope that our concerns will be taken seriously and that meaningful action will be taken before irreparable harm is done to our environment. I find it deeply disturbing that a special session is even being contemplated for the sole purpose of overriding an existing law designed to protect our islands by requiring assessment of environmental impacts BEFORE they occur.

The proposed legislation essentially renders the environmental impact statement meaningless. By stating that the ferry may operate "notwithstanding the fact that the non-preparation or non-completion of environmental assessments or impact statements, the lack of acceptance of an environmental impact statement, or the lack of a finding of no significant impact, would otherwise have barred, delayed, been a condition precedent to, or interfered with" its operation, the bill guarantees that the ferry will be allowed to operate regardless of the consequences.

Please think long and hard before you approve this legislation, because once our fears are realized and our natural resources are depleted (as has already happened on the ferry's first voyage, when three pickup trucks were filled with imu rocks from one of Maui's beaches), whales are killed (which is clearly inevitable at the speeds the ferry will be traveling), and invasive species are transported from one island to another, it will be too late to take corrective action. At best, the damage could be contained, but not reversed.

Wendi Gordon p. 2

Furthermore, leaving it up to Governor Lingle to impose conditions and protocols on the ferry to mitigate significant environmental effects that she alone determines are likely to occur is comparable to leaving the fox to guard the henhouse. Any subsequent conditions that the legislature could impose after seeing the damage done would be too little, too late.

Please, do what is pono now and require that an environmental impact statement be completed BEFORE the Superferry is allowed to resume operations. Thank you.

Testimony

I Oppose a Special Session for the Superferry and I Oppose the Operation of the Superferry before an EIS is Completed

- **No special session for the superferry!**
- **No operation of the superferry before the EIS is completed!**
- **No oversight by the Governor as she cannot be trusted!**
- **No oversight committee stacked with state and government officials, superferry executives, or Lingle cronies that have already demonstrated their lack of good faith.**
- **No cars unloaded on Maui!**

PLEASE:

- **Do not agree to a special session!**
- **Do not vote to allow the Superferry to operate without first completing a full and impartial EIS!**
- **Do not insult or ignore the ruling of the court!**
- **Do not ignore the fragile environment on Maui!**
- **Do not let Oahu decide what is good for Maui! Or Kauai!**
- **Do not send a message to the rest of the world that money is more important than protecting the unequalled beauty of Hawaii!**
- **Do not tell any and all businesses that you can buy special legislation to get around environmental laws.**
- **Do not reward businesses that manipulate public opinion by exploiting their employees so they can circumvent the law.**
- **Do not pretend that this will be good for Hawaii as it will have devastating effects that cannot be undone!**

Respectfully Submitted,

Vicki McCarty, P O Box 12245, Lahaina, HI 96761

October 22, 2007

The Honorable Senator Brian T. Taniguchi, Chair
Committee on Judiciary and Labor
c/o Public Hearing, Hand Delivery
1650 Kaahumanu Avenue
Wailuku, HI 96793

Dear Senator Taniguchi,

SUBJECT: Relating to Transportation, Hawaii Superferry. 24th Legislature, 2007,
Second Special Session, State of Hawaii

I have reviewed the draft legislation to exempt a large capacity ferry vessel company to operate in Hawaiian Waters "while" an EA/EIS is being conducted.

I do not support this approach to facilitate the introduction of such a use or user to Hawaiian waters. The EA/EIS process is a pro-active measure. Its processes are designed to evaluate and prevent impact. Once impacts occur, they can never be deleted from history. How does the legislature plan to mitigate ongoing impacts? Will they have the ability to ask the Super Ferry to stop operations if impacts prove to be too severe? Who will be responsible for their actions? The Governor?

Please do what is right and support the integrity of existing HRS Chapter 343 law.

I vote **against** the subject legislation. The EA/EIS study and recommendations should come first. Put the environment first. Protect the interests of our people and the land first.

Mahalo for your consideration of this matter. I can be reached at the address listed below.

Aloha,



Daniel Ornellas
P.O. Box 1461
Wailuku, HI 96793

October 22, 2007

TO: Hawaii State Legislature,
Committee on Judiciary and Labor,
Committee on Transportation and International Affairs,
Committee on Energy and Environment

From: Living Being in HuMan function with the attached name,
Foster Among
Ahupua`a O Kahoma, Mokupuni O Lahaina, Moku O Piilani (Maui)
Contact; email: kekahunakeaweiwi@yahoo.com
Phone; (808) 281-3894

Subject: **Hawaii Super Ferry Operation.**

Re: **OBJECTION TO PENDING SENATE BILL TO BE INTRODUCED AT SECOND SPECIAL SESSION ON WEDNESDAY, OCTOBER 24, 2007.**

With all due respect to the above committees and all Senate and House Representatives of the Hawaii State Legislature, I formally submit to you my deepest and sincere objection to the above mentioned bill and/or any future bill that will be considered and subsequently submitted by the Executive Branch and/or the Legislative Branch of the Hawaii State Government for legislative action that allows the circumvention and non compliant of the Rule of Law.

To change laws that protect the people and environment such as this pending Bil,I scheduled to be introduced at the Second Special Session on Wednesday, October 24, 2007 will do, is such a egregious scheme by Governor Lingle's Administration, it is hazardous to the very fabric of any civilized society.

It is detrimental to the People and leads to tyranny and the loss of freedom, property and life. History has documented well, millions of innocent people throughout the world have been killed because the People's *civil and human rights* have not been protected by the democratically elected officials, such as yourselves, from those that have gone on to become perpetrators of crimes against humanity.

The economy will not suffer a fraction of the damage and harm purported by Governor Lingle and her Super Ferry Supporter. This claim is not only unfounded, it is specifically intended to incite fear among the uninformed and misdirect the general public from what will really be harmed, the people and environment of these islands.

The related loss of jobs and money is not the fault of the courts per se, or at times the hostile actions by passionate opposition; it is the sole responsibility of Governor Linda Lingle and her Administration.

Had she and her Administration listened to the People two years ago and conducted the required Environmental Impact Survey the law and the people adamantly insisted on, no one would have had to subsequently loose jobs. No money would have been placed at risk.

Liability most definitely sits on the shoulders of Linda Lingle and her Administration. The sooner she is held properly accountable, the sooner we can end this fiasco.

The manner in which this entire affair has been conducted has been counter-productive to the goals and aspirations of "Sustainability" cited in this Bill. Again, it is an unfounded claim and only serves to insinuate that by not allowing the Super Ferry to operate while conducting the Environmental Impact Survey would cause a non-sustainable economy.

As Elected Officials of the People, you *represent* the People. The reaction and dire urgency expressed by Governor Lingle and the Super Ferry about having to call a Special Session to save the Super Ferry is a desperate act by one who seemed so sure of herself.

A few weeks ago, Governor Lingle *unfairly and inappropriately* called the people of Kauai who expressed their opposition to her confrontational comments and handling of the Super Ferry Affair "**Un-Hawaiian**"; and I would like point out first, she is not of *Hawaiian descent*, and furthermore, her present conduct and actions are in fact "**Un-Hawaiian!**"

Governor Lingle is the Elected Official of the Executive Branch of Government. The Hawaii Supreme Court and Second Circuit Court Judge, Joseph Cordoza is the Judiciary Branch of Government. The Judiciary has presided and ruled on the applicable laws of this controversial issue before us. Governor Lingle has gone on public record with her feelings and opinions on this matter, contrary to the facts and legal findings under the Rule of Law.

If the Super Ferry Officials decide to weigh anchor and take their business elsewhere, so be it. It is the cost of doing business when the *will of the people* are ignored.

It is time to bringing this divisive and potentially damaging Fiasco to a close. As the People's Representatives, i.e. the Hawaii State Legislature, I implore you all to *represent and execute the will of the People.*

Sincerely,

Living Being in HuMan function with the attached name,
Foster Robin Ampong



Susan L. Bradford
3145 Makamae Place
Kihei, HI. 96753
808-874-5351

October 20, 2007

Dear Senate,

I am very dismayed by the Senate's attempt to overturn both the Supreme Court ruling and Judge Cardoza's decision. It will strip our islands of the protections that we have through state environmental review law.

For two years, the Governor, the legislature and the Superferry people have been alerted that by-passing environmental laws is NOT acceptable. Hawaii is too precious to railroad this through with:

- a. No specific protections for marine animals
- b. No specific safeguards to protect each island from invasive species
- c. No provision to mitigate traffic and harbor congestion
- d. No protection of residents from inter-island crime and drug shipments
- e. No protections for the outer islands from the thefts of natural and cultural resources.
- f. No regard for the Environmental Protections Act
- g. No ability by the individual counties to regulate the Superferry

I am not opposed to ferries. I have taken many wonderful ferry rides in various places. But to thoughtlessly railroad this through without honoring laws that have been established to protect our fragile environment and all the reasons above, I am opposed to allowing the ferry to operate until an EIS has been completed and mitigation of any potential concerns is in place.

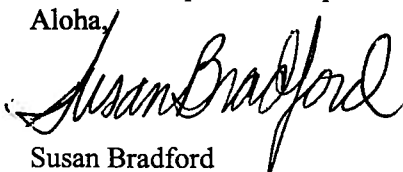
The Senate bill adds insult to injury by passing the buck of enforcement to the Governor, knowing full well that she has no interest in complying with our laws. What an obvious sham on your part!

Please stand up and be counted for looking at the long range protection of all aspects of our island. VOTE NO on allowing the Superferry to run without the above. Or, having the Senate enforce the conditions of operations I have attached. But, just a pretty list of conditions does nothing without enforcement. And, NOT by the Governor who has already proven her disregard for these measures.

By the way, I was called in the poll. I was asked whether I supported the Superferry. I said I supported having a ferry but ONLY after an EIS etc was done. She marked me down as in support of the Superferry! That isn't what I said. Polls can be skewed in any direction and evidently there was no room in that poll for a thoughtful answer.

Please act to protect our precious islands.

Aloha,



Susan Bradford



Ali'i Nui Mō'ī Edmund Keli'i Silva, Jr.
E malama i ka mana'o'i'o

Declaration

Be it known that I, Edmund Keli'i Silva, Jr. King of the Kingdom of Hawai'i hereby declare that the entire archipelago and surrounding seas of the archipelago belong to the Kingdom of Hawai'i. That all peoples throughout the world are served notice that Hawai'i is an independent sovereign nation ordained and sustained by the Hand and Might of a Just God in our Heavenly Father.

Document Signed by: His Royal Majesty on September 25, 2007

ORDER TO CEASE AND DESIST

WHEREAS, the Kingdom of Hawai'i is restored, and

WHEREAS, the process of restoring the Kingdom government is not yet complete, and

WHEREAS, the King can still act in the interest of the public peace and tranquility and has a responsibility to do so, and

WHEREAS, on August 23, 2007 (Gregorian Calendar), the Hawai'i Supreme Court issued an order in *The Sierra Club v. The Department of Transportation* requiring the State of Hawai'i to prepare an environmental assessment for the operation of the Hawai'i Superferry, and

WHEREAS, on August 31, 2007, the Hawai'i Supreme Court issued its final ruling on the merits and applied the law to the facts in that case to rule as follows:

"Therefore, based on this record, we can only conclude that DOT's determination that the improvements to Kahului Harbor are exempt from the requirements of HEPA was erroneous as a matter of law. The exemption being invalid, the EA requirement of HRS § 343-5 is applicable. This issue being dispositive, we need not consider Appellants' other arguments." and

WHEREAS, the ruling and the statute cited require the State of Hawai'i to prepare an environmental assessment before any further operation of the Hawai'i Superferry, and

WHEREAS, that ruling created great public controversy, and
WHEREAS, some high officials in the caretaker government chose not to accept the final court ruling, and

WHEREAS, said officials sought to continue operations of the Hawai'i Superferry, despite the law and the ruling of the Supreme Court, and

WHEREAS, that attempt to continue operation of the Hawai'i Superferry outside the law led to widespread citizen opposition, particularly on the Island of Kaua'i, and

WHEREAS, those public officials acting outside the law to continue operations of the Hawai'i Superferry responded to citizen opposition by threatening the use of force, including deadly force, and threatening criminal prosecution, imprisonment, and monetary fines, and

WHEREAS, citizen opposition simply grew stronger, creating the potential for a bloody confrontation between law enforcement personnel under orders to act outside the law and citizens seeking to enforce the law, and

WHEREAS, said illegal activities and their legal implications are detailed in the legal memorandum prepared at my direction by the Chief Justice of the Kingdom Supreme Court and attached hereto, and

WHEREAS, those public officials operating outside the law then redirected their efforts towards convincing the State Legislature to pass a law reopening the Supreme Court decision and altering that decision legislatively to find that the Hawai'i Superferry can continue to operate while the required environmental analyses are done, and

WHEREAS, such legislation would clearly be unconstitutional within the established governmental structure of the occupying government because such legislation would violate the separation of powers mandated by the United States Constitution, and

WHEREAS, the unconstitutional nature of such legislation is clearly set forth in the legal memorandum prepared at my direction by the Chief Justice of the Kingdom Supreme Court and attached hereto, and

WHEREAS, the illegal pursuit of continued operation of the Hawai'i Superferry has created turmoil, dissension, and even threat of bodily injury,

NOW, THEREFORE BE IT ORDERED, that all persons cease and desist any further actions in violation of the Hawai'i Constitution, ~~the~~ State of Hawai'i laws, and the United States Constitution, as the laws and Constitutions in use until such time as the restored Kingdom government can enforce its own laws and Constitution.

This Cease and Desist Order is general in application and specifically directed to the State of Hawai'i Governor; the State of Hawai'i Attorney General; the Director of the State of Hawai'i Department of Transportation; The Hawai'i Superferry, Inc.; the United States Department of Homeland Security; the United States Coast Guard; and all other public officials cooperating in the illegal conspiracy to continue operations of the Hawai'i Superferry and acting within the sovereign Kingdom of Hawai'i.

This Cease and Desist Order is also directed to those members of the Legislature who are wasting public resources on, and unnecessarily requiring citizens to waste their time and resources to participate in, an unconstitutional effort to pass a law to undo a final judgment of the Hawai'i Judiciary.

I have appointed special officers of the Kingdom to serve this Order on the identified parties and directed the publication and other distribution of this Order and the attached memorandum to the identified parties and the people.

I have distributed this Order to the media and request its publication.

As soon as all parties are in compliance with this Cease and Desist Order:

1. I request the State Legislature, in its capacity as Surrogate Legislature for the Kingdom Legislature *in absentia*, to pass legislation along the following lines:

A. Subject to those identified in this section fulfilling the steps set forth in Sections B and C below, subject to the passage of the bill proposed in Section 2 below, and subject to any exceptions by people refusing to accept the compensation offered in Section 2 below (see Section 2C), the Legislature grants immunity from civil suit and criminal prosecution under state laws for all actions taken in furtherance of the illegal conspiracy to continue operations of the Hawai'i Superferry after the August 23, 2007 Hawai'i Supreme Court ruling in *The Sierra Club v. The Department of Transportation* to the following:

- (1). Governor Linda Lingle
- (2). Director of Department of Transportation Barry Fukunaga.
- (3). Attorney General Mark Bennett,
- (4). Assistant Attorney General Lisa Ginosa
- (5). Interim Chairwoman of the Department of Land and Natural Resources Laura Thielen
- (6) Kaua'i Mayor Bryan Baptiste
- (7) Rear Admiral Sally Brice-O'Hara, United States Coast Guard
- (8) Previously Acting Kaua'i Police Chief Clayton Arinaga
- (9) All law enforcement personnel who engaged in arrests, seizing property, or otherwise participating in the events of August 26 and 27, 2007 in Nawiliwili Harbor, Island of Kaua'i
- (10) All other persons participating in the Unified Command or otherwise in the ongoing illegal

effort to permit the Hawai'i Superferry to operate after the Hawai'i Supreme Court decision in *The Sierra Club v. The Department of Transportation* case.

B. All persons identified in Section A will gather together on the Island of Kaua'i to offer their apologies to the people they wronged by cooperating in the illegal effort to continue the operations of the Hawai'i Superferry after the decision referenced in Section A.1.(10) above. Such an apology will include participation in a formal ho'oponopono process to heal the wounds inflicted by the Hawai'i Superferry episode.

C. All persons identified in Section B above shall then gather on the Island of Maui and apologize to the people they wronged and engage in a ho'oponopono process to heal the wounds inflicted by the Superferry episode.

D. All persons identified in Section A shall sign an open letter to the people of Hawai'i offering their apologies for all the wrongs committed during the Superferry episode to be submitted to the newspapers of every island for publication.

Whether those persons identified in Section A, particularly those in high positions, shall retain their positions is a matter for the Legislature to examine and which, I respectfully suggest, should be conditioned on their complete and unreserved cooperation in a legislative inquiry into the entire Superferry episode, including and not limited to the conspiracy to violate the law that occurred after the Supreme Court decision referenced in Section 1.A.(10) above.

Such decisions should also be tempered by the fact that most of the

members of the Legislature remained mute while these acts occurred.

2. I request the State Legislature, in its capacity as Surrogate Legislature for the Kingdom of Hawai'i Legislature *in absentia* to pass legislation to appropriate the following:

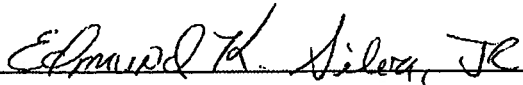
A. The sum of \$100,000 to each of the fourteen people arrested on August 26 and 27, 2007 while trying to enforce the law in Nawiliwili Harbor, Island of Kaua'i by preventing the illegal entrance of the Hawai'i Superferry.

B. The sum of \$50,000 to every other person, who provides proof by two affidavits of witnesses, that they entered the waters of Nawiliwili Harbor on August 26 and /or 27 to participate in the effort to enforce the law by preventing the entrance of the Hawai'i Superferry.

C. That these sums be paid conditioned on those receiving them waiving their right to file civil and /or criminal suits against those who may have violated their civil rights or otherwise committed a civil or criminal offense against them during the illegal efforts to continue the operations of the Hawai'i Superferry referenced above.

D. Those who decline the offer of compensation shall retain their right to pursue legal remedies against those responsible for any civil tort or criminal act committed against them.

So Ordered and signed this 17th day of October in the year 2007 (Gregorian Calendar).



Ali'i Nui Mō'i Edmund Keli'i Silva, Jr.

IN THE SUPREME COURT
OF THE KINGDOM OF HAWAI'I

IN THE MATTER OF
THE SIERRA CLUB V.
THE HAWAI'I DEPARTMENT OF TRANSPORTATION

PROTOCOL

All matters currently addressed by this Court are addressed with the full understanding that this Court has yet to be completed as part of the restoration process. In its incomplete status, the Court cannot issue binding opinions. Nor can the Court issue enforceable opinions.

The only capacity of the Court at this time is to issue advisory opinions.

Given the limitations of time and resources, the Court currently provides advisory opinions only at the request of the Ali'i Nui Mō'i.

ISSUE BEFORE THE COURT

In the interest of public health and safety and of domestic peace and tranquility, the Ali'i Nui Mō'i ordered this Court to provide an advisory opinion on an expedited basis regarding the following question:

Under Hawai'i Revised Statutes § 343-5 and in light of the decision in *The Sierra Club v. The Hawai'i Department of Transportation*, can the Hawai'i Department of Transportation permit the Hawai'i Superferry to use the harbor improvements, funded by the State and necessary for Superferry's operation, prior to the State of Hawai'i completing and the Governor or Department of Transportation accepting a final environmental assessment addressing the potential environmental impacts of Superferry's operations?

This court responded to His Majesty's order by preparing an advisory opinion dated October 7, 2007. That opinion accompanied the King's Order of Performance delivered to the Hawai'i Supreme Court on October 9, 2007.

As a follow up to that opinion, this Court herein provides a legal analysis of the continuing turmoil and the root of that turmoil to be found in the deliberate and willful disobedience of public officials rejecting the final ruling of the Hawai'i Supreme Court in the *Sierra Club* case.

On August 26 and 27, 2007, when people entered the waters of Nawiliwili Harbor to enforce the law by blocking the entrance of Superferry, the response from Federal and State law enforcement included arrests. See Exhibits 1 and 2 hereto. Law enforcement actions also included the use of mace and physical force, causing injury to those seeking to enforce the law. See Exhibits 3-4 attached hereto.

The official actions taken to continue operations of the Hawai'i Superferry, after the Supreme Court ruling, constituted actions outside the authority of the public officials involved and constituted both illegal actions and actions taken in furtherance of a conspiracy to violate the law.

The events of August 26 and 27 in Nawiliwili Harbor, Island of Kaua'i, include the following civil torts and/or criminal offenses:

Encouraging and facilitating the illegal operation of the Hawai'i Superferry, after the Supreme Court ruled that an environmental assessment was required, constituted malfeasance in office or official misconduct on the part of the Governor and the Director of the Department of Transportation.

The agreement between the Governor, the Director of the Department of Transportation, and the management/directors of Hawai'i Superferry, Inc. to continue operations of the Superferry illegally, after the Supreme Court ruled that an environmental assessment is required, constituted a conspiracy.

Even though State and Federal officials in the highest positions of responsibility were not present on August 26 and 27, to the extent those officials acted to create and/or facilitate the situation, those officials are accessories to the events on those dates.

On August 26 and 27, law enforcement officials arrested numerous people trying to prevent the implementation of the illegal conspiracy to continue Superferry operations. Exhibits 1 and 2 hereto. All those arrests were false arrests.

The people arrested on August 26 and 27 were falsely imprisoned.

Anyone participating in the Superferry enterprise who took from another person their boat, surfboard, boogie board, or other possession without their consent is guilty of theft. www.YouTube.com (search "Kaua'i police arresting surfers !" – 3 ½ minute video showing arrests and seizure of boogie and surf boards).

The actions of law enforcement in seizing the property of people in the Nawiliwili Harbor area on August 26 and 27 took place with the implicit use of deadly force. Such actions constituted robbery.

In the course of aiding and abetting Superferry in violating the law, law enforcement personnel arrested, and detained against their will, citizens trying to enforce the law. Such actions constituted kidnapping.

To the extent the County Prosecutor pursued or continues to pursue prosecution of those arrested, rather than those participating in the illegal conspiracy, the County Prosecutor is engaged in, or is engaging in, obstruction of justice.

The Coast Guard boat that de-tarped and manned its large caliber machine gun in Nawiliwili Harbor committed an assault on those within range.

When the Governor then created the Unified Command to continue the illegal operation, all participants in the Unified Command joined the conspiracy.

HRS §707-716 Terroristic threatening in the first degree. (1) A person commits the offense of terroristic threatening in the first degree if the person commits terroristic threatening:

- (a) By threatening another person on more than one occasion for the same or a similar purpose;
- (b) By threats made in a common scheme against different persons;

(c) Against a public servant arising out of the performance of the public servant's official duties. For the purposes of this paragraph, "public servant" includes but is not limited to an educational worker. "Educational worker" has the same meaning as defined in section 707-711; or

(d) With the use of a dangerous instrument.

(2) Terroristic threatening in the first degree is a class C felony. [L 1979, c 184, pt of §1(2); am L 1989, c 131, §1; gen ch 1992; am L 2006, c 230, §31]

The press conference held by the Governor, the Coast Guard, and Superferry announcing the plan to return to Nawiliwili Harbor constituted an act of official terroristic threatening. Exhibit 5 hereto.

To the extent that the Attorney General cooperated with the Superferry illegal enterprise and/or failed to prosecute the government officials cooperating in that enterprise, the Attorney General is guilty of obstruction of justice. Exhibit 5 (Attorney General participated in press conference threatening arrest and prosecution of citizen law enforcers)

The release of the statement of offenses and punishments aimed at those intending to enforce the law in Nawiliwili Harbor was the second act of official terroristic threatening. Exhibit 6 hereto. That second act triggers Section (a) of the State statute.

The Governor going to Kaua'i to again threaten people with arrest and prosecution is a third act of official terroristic threatening, reinforcing the application of Section (a) of the State statute. Exhibit 7 hereto.

The official threats made against hundreds of people to further the Superferry enterprise triggered Section (b) of the State statute.

The people trying to enforce the law in the face of official lawlessness assumed a position as “public servants.” The threats directed at these public servants triggers Section (c) of the State statute.

To threaten to arrest, prosecute, imprison and fine people acting in harmony with the law in order to further violations of law constitutes official terroristic threatening.

The inclusion of law enforcement personnel in the Unified Command added use of deadly weapons to enforce the threats, triggering section (d) of the statute.

The conspiracy to intimidate, arrest, prosecute, imprison, and fine the people trying to enforce the law against the illegal operation of Superferry constitutes a civil rights conspiracy with both state and private actors.

Upon remand, the trial court in the *Sierra Club* case at issue, issued a ruling granting a permanent injunction preventing any further operation of the Hawai'i Superferry until such time as the environmental assessment ordered by the Hawai'i Supreme Court is “legally concluded.” Order Granting Plaintiffs' Motion to Enforce Judgment Requiring Environmental

Assessment by Prohibiting Implementation of Hawai'i Superferry Project, for Temporary, Preliminary, and Permanent Injunction, Civil No. 05-1-0114(3), (2nd Cir Haw.), October 9, 2007 at 7. The Order also invalidated the Harbors Operating Agreement as it relates to Mau'i between the State of Hawai'i and Hawai'i Superferry, Inc. Id.

This order confirmed again that HRS § 343-5 requires completion and acceptance of a required EA prior to any implementation of the action proposed.

In response to this order, the Governor and other supporters of the Hawai'i Superferry have mounted an extensive campaign to have the Legislature hold a special session for purposes of amending the law to permit the Hawai'i Superferry to continue operating.

Opponents of Superferry operating prior to completion of an EA or an environmental impact statement (EIS) are mounting a campaign to prevent passage of such legislation.

The turmoil is extraordinary.

Email systems at the Capitol are breaking down or becoming useless to the legislators as automatically generated emails and genuine citizen expression pour into the legislative offices.

Print media outlets are swamped with letters to the editor and opinion editorials.

The General Manager of a broadcast company with seven radio stations in Hawai'i began broadcasting his message criticizing the State Senate and calling upon the people to demand a special session of the Legislature to pass legislation allowing Superferry to operate. The message ran multiple times each hour.

One Senator is already calling for hearings on the outer islands prior to the passage of any legislation. Such hearings are certain to be highly contentious, given the expressions of opposition to Superferry to date from the outer islands.

Legislators are struggling with proposed legislation that can protect the environment while allowing Superferry to be operated profitably.

These and other manifestations of the controversy continue to heat the political atmosphere. The community is definitely in the midst of an interbranch conflict between the courts and the Governor allied with some legislators.

This conflict emanates from a profound misunderstanding of the United States and Hawaiian Constitutions. In both Constitutions, the separation of powers between the Executive, Legislative, and Judicial

Branches is a fundamental principle that defines the proper and legal operations of the government.

The Supreme Court ruling in the *Sierra Club* case constituted a final judgment with respect to the bar on continued operation of Superferry. The trial court, on remand, simply enforced the Supreme Court's order by entering a permanent injunction preventing Superferry from using the harbor improvements in the Mau'i harbor and invalidated the harbor use agreement as that agreement applies to Maui harbor.¹

The Legislature cannot constitutionally pass legislation that alters that final judgment.

The key issue here is the constitutional separation of powers. This issue is discussed in depth regarding the ability of a legislative body to overturn a judicial decision in *Plaut v. Spendthrift Farm, Inc. (93-1121)*, 514 U.S. 211, 115 S. Ct. 1447, 131 L. Ed. 2d 328 (1995). The essential holding in this United States Supreme Court case is that a legislature cannot pass a law altering a final judgment of a court because to do so would violate the separation of powers between the legislative and judicial branches.

This holding turns on whether the judgment is final.

¹ While the court in Mau'i acted within the court's limited jurisdiction, the Supreme Court decision is of statewide applicability.

Our decisions to date have identified two types of legislation that require federal courts to exercise the judicial power in a manner that Article III forbids. The first appears in *United States v. Klein*, 13 Wall. 128 (1872), where we refused to give effect to a statute that was said "[t]o prescribe rules of decision to the Judicial Department of the government in **cases pending** before it." *Id.*, at 146. Whatever the precise scope of *Klein*, however, later decisions have made clear that **its prohibition does not take hold when Congress "amend[s] applicable law."** *Robertson v. Seattle Audubon Society*, 503 U.S. 429, 441 (1992).

Plaut, supra at 218 (emphasis added).

Thus Congress can amend a law and affect a case in which the legal issue addressed by the law is still pending. The case cited above and being discussed publicly, *Robertson v. Seattle Audubon Soc'y* (90-1596), 503 U.S. 429 (1992), is just such a case of the law changing while a case is pending.

After a final decision, however,

[i]t is, of course, retroactive legislation, that is, legislation that prescribes **what the law was at an earlier time, when the act whose effect is controlled by the legislation occurred--**in this case, the filing of the initial Rule 10b-5 action in the District Court. When retroactive legislation requires its own application in a case **already finally adjudicated**, it does no more and no less than **"reverse a determination once made, in a particular case."**

Ibid. at 226 (emphasis added) citing The Federalist No. 81 at 545.

Having achieved finality, however, a judicial decision becomes the last word of the judicial department with regard to a particular case or controversy, and **Congress may not declare by retroactive**

legislation that the law applicable to that very case was something other than what the courts said it was. Finality of a legal judgment is determined by statute, just as entitlement to a government benefit is a statutory creation; but that no more deprives the former of its constitutional significance for separation of powers analysis than it deprives the latter of its significance for due process purposes. See, e.g., *Cleveland Bd. of Ed. v. Loudermill*, 470 U.S. 532 (1985); *Meachum v. Fano*, 427 U.S. 215 (1976).

Ibid at 227(emphasis added).

The separation of powers violation here, if there is any, consists of depriving judicial judgments of the conclusive effect that they had when they were announced, not of acting in a manner--viz., with particular rather than general effect--that is unusual (though, we must note, not impossible) for a legislature. To be sure, a general statute such as this one may reduce the perception that legislative interference with judicial judgments was prompted by individual favoritism; but it is legislative interference with judicial judgments nonetheless. **Not favoritism, nor even corruption, but power is the object of the separation of powers prohibition. The prohibition is violated when an individual final judgment is legislatively rescinded for even the very best of reasons, such as the legislature's genuine conviction (supported by all the law professors in the land) that the judgment was wrong; and it is violated 40 times over when 40 final judgments are legislatively dissolved.**

Ibid. at 228-229.

[T]he doctrine of separation of powers is a *structural safeguard* rather than a remedy to be applied only when specific harm, or risk of specific harm, can be identified. In its major features (of which the conclusiveness of judicial judgments is assuredly one) it is a prophylactic device, establishing high walls and clear distinctions because low walls and vague distinctions will not be judicially defensible in the heat of interbranch conflict.

Ibid. at 239.

Article III establishes a "judicial department" with the "province and duty . . . to say what the law is" in particular cases and controversies. *Marbury v. Madison*, 1 Cranch 137, 177 (1803). The record of history shows that the Framers crafted this charter of the judicial department with an expressed understanding that it gives the Federal Judiciary the power, not merely to rule on cases, but to *decide* them, subject to review only by superior courts in the Article III hierarchy—with an understanding, in short, that "a judgment conclusively resolves the case" because "a 'judicial Power' is one to render dispositive judgments." Easterbrook, *Presidential Review*, 40 Case W. Res. L. Rev. 905, 926 (1990). By retroactively commanding the federal courts to reopen final judgments, Congress has violated this fundamental principle.

Ibid at 218-219

The Hawai'i Supreme Court's *Sierra Club* decision, in light of the clear mandate and plain wording of the statutory "condition precedent" requirement, decided the matter and left the trial court to enforce that decision.

The trial court granted the plaintiffs' motion to "enforce" the final judgment of the Supreme Court and entered an injunction.

Whatever the Hawai'i Superferry lawyers may think that they are appealing in the Maui case, they are not appealing the original Supreme Court ruling. They are only appealing the specific enforcement of that ruling imposed by the trial court, which is not an appeal on the merits. As far as the merits, the case is closed and the judgment is final.

If legislation is passed to allow operations of Superferry while an EA or EIS is being prepared, that legislation must somehow lift the injunction. That would require reopening the judicial decision. The Legislature would then be exercising judicial power. *Plaut* is directly on point that such a reopening of a final decision is an impermissible violation of the separation of powers.

The necessary assertion of the separation of powers would begin the process of restoring the public peace and stopping the interbranch conflict.

Separation of powers, a distinctively American political doctrine, profits from the advice authored by a distinctively American poet:
Good fences make good neighbors.

Ibid. at 240.

The provisions of the Hawai'i Constitution create the same separation of powers as the United States Constitution. See Addendum below.

The legislative power of the Hawai'i Legislature extends to all rightful subjects of legislation not inconsistent with this constitution or the Constitution of the United States.

Article VI, Section 1, Hawai'i Constitution.

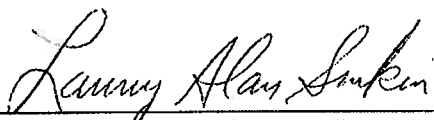
For the Hawai'i Legislature, overturning a final judicial ruling is not a rightful subject of legislation consistent with the Hawaiian or United States Constitutions.

CONCLUSION

The political leadership of the State violated the public trust, abused their power, and violated the law by attempting to continue the operation of the Hawai'i Superferry after the Supreme Court's Sierra Club decision.

Now that same leadership is asking legislators to act outside their constitutional power to reopen a final judicial judgment and reach a different result.

The Legislature can legitimately refuse to include in any special session legislative proposals that are clearly unconstitutional.



LANNY ALAN SINKIN
CHIEF JUSTICE

DATED: October 16, 2007

For publication²

² Upon completion of this Court and establishment of a reporting system, the advisory opinions issued during the interim period between initial restoration (September 25, 2007) and full restoration will be published.

Addendum
Constitution of the United States
compared to
Constitution of Hawai'i
re: Separation of Powers

LEGISLATIVE POWER

United States Constitution

Article I.

Section 1

All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Hawai'i Constitution

Article III

THE LEGISLATURE

LEGISLATIVE POWER

Section 1. The legislative power of the State shall be vested in a legislature, which shall consist of two houses, a senate and a house of representatives. Such power shall extend to all rightful subjects of legislation not inconsistent with this constitution or the Constitution of the United States.

EXECUTIVE POWER

United States Constitution

Article II.

Section 1

The executive Power shall be vested in a President of the United States of America.

Hawai'i Constitution

ARTICLE V

THE EXECUTIVE

ESTABLISHMENT OF THE EXECUTIVE

Section 1. The executive power of the State shall be vested in a governor.

JUDICIAL POWER

United States Constitution

Article 3.

Section 1

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.

Hawai'i Constitution

ARTICLE VI

THE JUDICIARY

JUDICIAL POWER

Section 1. The judicial power of the State shall be vested in one supreme court, one intermediate appellate court, circuit courts, district courts and in such other courts as the legislature may from time to time establish.

The several courts shall have original and appellate jurisdiction as provided by law and shall establish time limits for disposition of cases in accordance with their rules. [Ren and am Const Con 1978 and election Nov 7, 1978]

EXHIBITS TO OPINION
DATED OCTOBER 16, 2007

EXHIBIT NUMBER	CONTENTS
1	The Garden Island – Article re: arrests and official violence
2	The Garden Island – Article re: arrests, and official threats and violence
3	Declaration of Fabienne Christe re: witness to official violence
4	Declaration of Ka’iulani Edens re: witness to official violence
5	Honolulu Advertiser – Article re: Governor announcing Unified Command with Coast Guard security zone and return to Kaua’i
6	Government publications re: consequences of entering security zone without permission
7	Honolulu Advertiser re: people’s response to Governor’s trip to Kaua’i



Posted: Tuesday, Aug 28, 2007 - 10:33:39 pm HST

Action unites many

by Nathan Eagle - THE GARDEN ISLAND

When outrigger canoe club paddler Leigh Drachman entered the water Monday, she never expected an evening practice would turn into a “wonderful opportunity” to join hundreds of Kaua‘i residents protesting the Hawaii Superferry at Nawiliwili Harbor.

The 34-year-old Kapa‘a local joined a diverse group united under a common cause — preventing the new inter-island “Alakai” from operating until the state conducts an environmental assessment.

But not all Kaua‘i residents there supported the protests Sunday and Monday evenings. Some were simply curious bystanders and others were there to greet family members arriving from O‘ahu.

As Kapa‘a resident Sharon Verity waited in a line of cars stuck on the narrow jetty road Sunday, she said some of the protesters treated her and her family rudely and hopes for more respectful demonstrations in the future.

Jimmy Trujillo, the spokesman for Hui-R, a coalition of community members united against the Alakai, said he hopes to work with Superferry officials to devise a plan to return to Kaua‘i to pick up stranded O‘ahu residents.

“We’re all living on this island together and we know there’s people on that boat that have friends and relatives here,” he said. “We don’t want to make enemies, we just want to make it right. I would be a fan of the ferry if I knew it was safe, affordable, efficient and if we all had a say. People do want an alternative to air flights for inter-

island travel.”

Fourteen women and a coach in three canoes paddled out in unison with a men’s team to reinforce more than 40 surfers, swimmers and boogie boarders who had formed a human blockade to stave off the 350-foot catamaran.

“It was so wonderful when we saw the canoes — so reassuring,” said 31-year-old Kaua‘i surfer Mehana Vaughan. “To see them there in a traditional Hawaiian vessel, making turns in front of the ferry ... it was moving.”

“When we saw the people on canoes do what they do every afternoon, I was moved to tears,” Trujillo said. “It was a powerful statement ... growing the resistance using peaceful, non-violent tactics.”

Vaughan said she felt inspired to support the Superferry protesters after witnessing their efforts Sunday evening when the Alakai made its maiden voyage to Kaua‘i.

“I’ve been sick about the Superferry all summer ... it just didn’t feel like Kaua‘i had been listened to,” Vaughan said. “The culture of Kaua‘i is you take care before taking. It’s about living within our limits as an island ... and taking care of our impacts.”

Backed by more than 400 sign-waving, drum-beating, chant-singing protesters on the jetty road, the flotilla in the water ranged from a 12-year-old student to a 55-year-old businessman and included organic farmers and fishermen.

“It was so exciting to see the spirit of Kaua‘i,” surfer Andrea Noelani Brower said. “The experience of being in the water was very powerful with the moon rising and the canoes and the surfers and the protesters silhouetted against the background.”

The protesters were mixed ethnicities, political

backgrounds and economic levels, new residents and locals who have lived on Kaua‘i for generations, the 22-year-old lifelong Kaua‘i resident said.

“The community has been so lacking in our ability to communicate what we’re frustrated with. The Superferry may be the symbol of larger issues,” Brower said. “I really hope that Kaua‘i uses this energy to talk about what we want to see happen with affordable housing, development, too much tourism and other alternative visions.”

The surfers suffered thirst and hunger as they battled the cold after the sun set, but some residents swam out bottled water to help, Vaughan said.

“We were singing, laughing, looking out for one another and feeling supported by the island,” she said. “There was a growing camaraderie.”

This spirit developed as multiple local, state and federal law enforcement vessels tried to deter the protesters. The U.S. Coast Guard reportedly arrested some, but was ultimately unable to break up the group.

The Alakai abandoned its effort to dock after protesters stalled it for around three hours. The ferry was scheduled to arrive at 6 p.m. with passengers from O‘ahu, and then depart for Honolulu at 7 p.m.

“We knew the Superferry’s strategy was to wait us out,” Vaughan said. “We were determined to finish together and decided when it turned to leave to wait and watch it till the lights were gone ... then stay 10 minutes after and go in together.”

Many swimmers and surfers were greeted on shore by Kaua‘i Police Department officers and masked SWAT team members.

“I didn’t realize how scary that point was building to be,”

Vaughan said.

“The cops were lined up to arrest anyone that was wet,”
Brower said.

KPD arrests 11

Kaua‘i Police Department Lt. Dan Miyamoto said police arrested seven adults and four juveniles on misdemeanor charges Monday evening during the second day of protests against the Hawaii Superferry at Nawiliwili Harbor.

The adults arrested were: Mathew Hamm, 25, obstructing and disorderly conduct; Gilbert Nieto, 49, obstructing and disorderly conduct; Alan Zebe, 36, obstructing and disorderly conduct; Kana Kirkpatrick, 22, obstructing, disorderly conduct and criminal trespass second degree; Shane Valiere, 21, obstructing, disorderly conduct and criminal trespass first degree; Steven Valiere, 55, obstructing; and Robert Pa, 46, disorderly conduct.

A local businessman, who spoke on condition of anonymity, said he suffered from a pepper spray attack Sunday evening by a Kaua‘i Police Department officer, but the department could not confirm the incident.

“It was excruciating pain and I couldn’t see for an hour — very scary,” he said.

Unconfirmed reports claim officers maced protestors attempting to deflate a tire on a vehicle and causing other damage.

These 11 arrests are in addition to three Kaua‘i residents who were arrested during the protest Sunday evening.

“These are not terrorists. These are our dads, brothers and sisters demonstrating their rights to free speech and to assemble,” Trujillo said. “This should not be impeded by corporate interests ... especially at the expense of public

safety and public interest.”

Several protesters wished to extend their aloha to the U.S. Coast Guard and Kaua‘i Police Department for doing their jobs well and keeping the demonstration as safe as possible.

“There were a lot of angry police officers making snide remarks and being tough with women, but also a lot of very respectful police officers who I don’t think wanted to be there,” Brower said.

Miyamoto said all have posted bail, but could not provide more specific details.

People for the Preservation of Kaua‘i spokesman Rich Hoepfner said he helped bail the protesters out until 2 a.m.

He added that the environmental group plans to dedicate its efforts now to legal action to stop the Superferry with a permanent injunction until the environmental review is completed.

Environmentalists are concerned the Alakai will endanger marine life, create traffic jams, spread invasive species and negatively impact the community.

• Nathan Eagle, staff writer, can be reached at 245-3681 (ext. 224) or neagle@kauaipubco.com.



Posted: Tuesday, Aug 28, 2007 - 10:25:36 am HST

Superferry turned back - Protesters form floating human chain in harbor

by Nathan Eagle - THE GARDEN ISLAND

The Hawaii Superferry found no port in a storm last night, turning back to O‘ahu about 9 p.m. after dozens clogged the entry to Nawiliwili Harbor while hundreds shouted from shore.

Sailing in the face of court orders, the Hawai‘i Superferry returned to Kaua‘i last night with another load of passengers and cars traveling from Honolulu to Nawiliwili Harbor on discounted \$5 fares.

“They wouldn’t offer \$5 fares if it were pono,” said protester Jeri DiPietro of Koloa.

Close to 1,000 Kaua‘i residents — waving “Bury the Ferry” signs and shouting “Go home” — lined the narrow jetty road that leads to the 350-foot “Alakai’s” designated boarding zone.

Despite an added local, state and federal law enforcement presence in and out of the water, more than 60 surfers, swimmers, kayakers and outrigger canoe paddlers again delayed the inter-island catamaran from docking by its 6 p.m. scheduled arrival time.

Backed by a few Kaua‘i Police Department boats, U.S. Coast Guard officers in multiple vessels — including an 85-foot cutter — threatened arrest through loud speakers as they tried to clear a path through the human wall.

It was unclear at press time how many protesters law enforcement officers took into custody.

Four KPD cruisers and officers controlled the intersection to the jetty road, preventing protesters from repeating Sunday's vehicle blockade that further stalled the unloading of Superferry passengers and cars arriving on the Alakai's first official service run here.

Kaua'i Police Department officers Sunday arrested three local residents on misdemeanor charges and the U.S. Coast Guard forcefully cleared at least 20 surfers and swimmers blocking the vessel from docking.

"They herded them like goats," said Koohan Paik of Kilauea.

KPD Capt. Scott Yagihara said police charged Justin Wood, 22, of Kapa'a, on suspicion of disorderly conduct; Bomun Bockchung, 28, Kilauea, on suspicion of harassment, disobedience to police officers and obstructing government operations; and Randy Wolfshagen, 49, Kekaha, on suspicion of obstructing government operations and criminal trespass in the second degree.

Temporary restraining order granted

Joseph Cardoza, Second Circuit Court judge for Maui, yesterday granted three environmental groups' request to stop the Superferry from using Maui's Kahului Harbor.

The judge issued a temporary restraining order hours after the Alakai successfully made its second daily run to Maui. The order, in effect until Sept. 6, does not apply to ports on O'ahu or Kaua'i.

But People for the Preservation of Kaua'i spokesman Rich Hoepfner said plans are underway to file for a similar injunction in Kaua'i court today.

"I'm so impressed with all the people that have turned

out,” he said, noting there has been coast-to-coast media coverage.

The Hawai‘i Supreme Court unanimously ruled Thursday that the state Department of Transportation erred in its decision to exempt the Superferry from an environmental review of \$40 million in state-funded harbor improvements.

Attorney Isaac Hall — representing Maui Tomorrow, the Kahului Harbor Coalition and the Sierra Club — is seeking a permanent injunction to ground the Alakai in Honolulu during the Department of Transportation’s environmental review.

The Superferry is violating state law by operating prior to an environmental assessment, Hall said.

“Everybody across the state sees that the law is clear,” he said.

“This review should have been done years ago,” Sierra Club’s Hawai‘i Chapter Director Jeff Mikulina said. “There’s a potential for serious environmental and community harm. ... You have to look before you leap.”

Paik said she filmed much of the protest Sunday, which started around 3 p.m. at Nawiliwili Park and ended sometime after 10 p.m. when the Alakai sailed back to O‘ahu.

There were 20 police cruisers, seven SWAT members and 1,000 protesters there then, she said.

Witnesses said they saw police use Mace on two residents Sunday.

The Kaua‘i Police Department at press time could not confirm or deny these incidents or others reported.

“I’m shocked that the owners of the Superferry decided

to ignore the Supreme Court's decision," Kaua'i County Councilwoman JoAnn Yukimura said.

When an entity like the Superferry is refusing to follow the law and law enforcement agencies like the U.S. Coast Guard are brought in to protect the Superferry, Yukimura said, "it distorts the framework of law and order in our community."

The councilwoman said she blames Superferry officials and the Department of Transportation for creating unsafe conditions by allowing the situation to happen and not following the law.

The Kaua'i County Council unanimously approved a resolution on Jan. 26, 2005, requesting an environmental impact statement be prepared prior to the Superferry starting service.

"If the Superferry had spent the last year and a half doing an EIS instead of pushing its way through, we all would be better off," Yukimura said.

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Attorney for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII**

MEGAN WONG, et al.,)
 Plaintiffs)
 v.)
GEORGE W. BUSH, et al.)
 Defendants)
_____)

Civil No. CV07-00484

DECLARATION OF FABIENNE CHRISTE

I, Fabienne Christe, declare under penalty of perjury, that the following statements are true and correct:

1. I reside on the Island of Kaua'i, Islands of Hawai'i.
2. I participated in the non-violent, First Amendment protected protest against the illegal entry of the superferry into Nawiliwili Harbor on August 26.
3. I am concerned about the impact of the ferry and its passengers on the water, on animal health and well being, and on island life and lifestyle, safety and security.
4. On August 26, I stood on the dock and at the gate and observed the Coast Guard was violent and very rough to the surfers.

5. The Coast Guard forcibly took several surfboards away.
6. The Coast Guard boat circled around the group of 12 surfers.
7. As the Superferry came in, the Coast guard quickly drove their boat up to one surfer and threatened him.
8. At the harbor gate, the police shot mace in the faces of two demonstrators.
9. An ambulance arrived and took care of the men.
10. What I observed overall was serious violent energy directed against peaceful protest.
11. The message seemed to be: "If you don't do what I want, I will bring in the military to protect this business."
12. I have observed, since the events of August 26, that the attitudes and actions of the Coast Guard have had a strong impact on the people.
13. The common view is that the Superferry and its supposed rights are protected, while the resident of Kaua'i and their rights, guests who use the harbor, and the natural environment and lifestyle for rest, health improvements, and recreation are not.
14. The animals who live in Hawai'i or visit out waters for part of the year are not protected from the Superferry's trip from Oahu to the Kaua'i harbor and back.

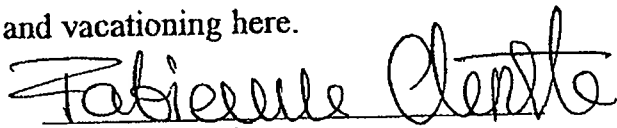
Exhibit 3

15. The animals must rely upon us to protect them because they have no voice.

16. We are not voting on this issue and therefore we residents and the animals and environment have no voice.

17. We should have the freedom to communicate our concerns and the needs of the island and not be bullied or railroaded into accepting something that has the potential of harming all of us.

18. Environmental impact studies should be conducted for the health and wellbeing of all the beings residing and vacationing here.


Fabienne Christe

Dated: Sept. 22, 2007

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email: lanny.sinkin@gmail.com
Attorney for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII**

MEGAN WONG, et al.,)
 Plaintiffs)
 v.) Civil No. CV07-00484
GEORGE W. BUSH, et al.)
 Defendants)
_____)

DECLARATION OF KA'TULANI EDENS

I, KA'TULANI EDENS, declare under penalty of perjury, that the following statements are true and correct:

1. I resides on the Island of Kaua'i, Island of Hawai'i.
2. I am an indigenous person from the Island of Kaua'i.
3. My family has been on Kaua'i for at least 10 generations.
4. I have the world's only all sovereignty music show at KKCR in Hanalei.
5. I have fought for Sovereignty and been involved in many protests.
6. I was on the sea wall on August 27th.
7. At about 1630, I picked up my Hawaiian Flag, and asked another person to walk in through the barricaded jetty road, also carrying a Hawaiian Flag.
8. As I approached the Gate there were 4 armed officers, all with their hands

Exhibit 4

on their gun straps, as if they were going to pull their weapons for any slight movement!

9. The officers were scary.

10. I took a deep breath, told the kid with me to be quiet and follow me, and approached the Police.

11. They were at the time herding Rich Hoepner and his wife out of the gate, threatening to arrest them.

12. As I approached with the flags, the officers said things like, "Come'on, Ka'iulani, you know we can't let you in."

13. I said loudly, "I am NOT under the Jurisdiction of the U.S. step aside!" and held my breath.

14. They stepped aside!!

15. We walked in.

16. At some point I turned around and saw a few hundred people had followed me in.

17. The cops were on their radios, asking "What should we do?"

18. As the protest went on I was on the wall; stayed in the same place most of the night.

19. The violence I witnessed has caused horrible Post Traumatic Stress Disorder.

20. I've had to double up on my meds under my doctor's orders, as well as take something to help me sleep.
21. I have nightmares about the kids I saw being run over in the water, about law enforcement hunting people in the ocean.
22. I was almost maced by an overzealous rookie when I objected to his handling of an arrestee.
23. This policeman slammed the guy against the wall as hard as he could, although the surfer WAS NOT RESISTING!
24. The violent images will never leave my memory.
25. I can only hope they fade over time, and with therapy.
26. As a human being my sense of well being, and freedom is gone.
27. I cannot trust Government nor law enforcement ever again.
28. As a Native Hawaiian, a Polynesian, I feel extremely violated as if I am being raped over and over (and I speak from actual experience).
29. My gathering rights (PASH) are being stripped away by the same government who "gave" us those rights.
30. My stress is so bad I can barely leave my home.
31. I am extremely depressed about the desecration of our island.

Ka'ulani Edens Huff 10/2/07
KA_IULANI EDENS

Exhibit 4

Declaration of Ka'ulani Edens

3

Posted on: Thursday, September 13, 2007

Ferry can resume Kauai route Sept. 26

By Derrick DePledge and JOAN CONROW
Advertiser Staff Writers

Gov. Linda Lingle yesterday issued a firm warning to protesters on Kaua'i, saying they would be arrested and prosecuted if they break the law and disrupt the Hawaii Superferry during its expected return to Nawiliwili Harbor in two weeks.

Federal, state and local authorities have cleared the Superferry to resume service between O'ahu and Kaua'i starting Sept. 26. The Alakai will be temporarily restricted to operating during the day instead of the original evening arrival and departure schedule at Nawiliwili Harbor, until authorities decide it is safe.

The daytime restriction could pose conflicts for space with other harbor users, such as cruise ships, but is intended to better protect public safety if protesters again choose to go into the water and block the ferry.

Lingle, state Attorney General Mark Bennett and Coast Guard Rear Adm. Sally Brice-O'Hara cautioned protesters that the state and federal response would be much swifter and sweeping than when protesters first delayed and halted the ferry last month.

"It's not our desire or preference to arrest or prosecute people, but no one should mistake the restraint that was shown initially as a lack of resolve on our part to make certain that vessel is allowed to travel safely and that we protect public safety overall," the governor said at an afternoon news conference at the state Capitol.

DETECTING PROTESTERS

The Coast Guard has used an emergency rule to create a federal security zone at the harbor to protect the Alakai, along with a designated protest area off Kalapaki Beach. The security zone is in effect for one hour prior to the ferry's arrival and 10 minutes after the ferry's departure. A separate federal security zone exists 100 yards around the ferry.

The state also will set up barricades and other crowd-control measures around the harbor to deter protesters, including closing off portions of a public-access road along the jetty.



Protesters greeted the Hawaii Superferry upon its approach Aug. 26 to Kaua'i's Nawiliwili Harbor. If protesters disrupt Superferry operations again — the Alakai is set to return to Kaua'i Sept. 26 — officials warn that the response will be much swifter and sweeping than last month.

DENNIS FUJIMOTO | The Garden Island

Brice-O'Hara said the Coast Guard was caught by surprise by the protests last month.

"None of us were prepared for that level of passion and determination to halt the Superferry's transit," she said. "Absolutely, that was not something that we were expecting and we were very measured in our response. These weren't terrorists, but quite honestly, the Coast Guard is used to reaching in the water and pulling the hand of someone who desperately wants to be rescued.

"Now we have people who want to make a statement."

Lingle said she plans to visit Kaua'i before Sept. 26 for public talks on the Superferry's return.

The Lingle administration believes the state Supreme Court's ruling requiring an environmental assessment for the Superferry only applies to Kahului Harbor on Maui and that the ferry has a legal right to go to Kaua'i.

A Maui court has issued a temporary restraining order against the Superferry for Kahului Harbor and is hearing arguments about whether it should be allowed to resume service to Maui while the state conducts the environmental assessment.

A Kaua'i court has denied a temporary restraining order for Nawiliwili Harbor and has scheduled a Monday hearing date on whether ferry service can proceed during the environmental review, which will involve all four harbors that the Superferry plans to serve.

Court rulings on Maui or Kaua'i over the next two weeks could influence the Sept. 26 target date for ferry service to Kaua'i.

'HEAR OUR VOICE'

On Kaua'i yesterday afternoon, about 75 people gathered for a rally at the historic County Building, where the County Council was meeting, and later engaged the governor's liaison and Mayor Brian Baptiste.

Andrea Brower, who was born and raised on Kaua'i and who had joined protesters in the water to blockade the Alakai, said young people like her "don't feel represented by government. We will get in the water again. It's the young people, and we ask you to hear our voice."

Some on the County Council, which had passed a nonbinding resolution in January 2005 calling for an environmental review of the Superferry, said they were disappointed by Lingle's announcement. "I'm very disappointed about the decision because I don't think the courts have announced whether the Superferry is a legitimate operation or not," said Councilwoman JoAnn Yukimura.

Yukimura addressed the rally, saying: "I want to thank you all for your concern about the island. Kaua'i has always shown itself to be a separate kingdom. I want to ask you all to really take personal responsibility for your actions and to do things without violence and to do things with respect for everyone."

Councilman Tim Bynum said he had called on Superferry not to return to Kaua'i until the legal disputes are clarified.

"I'm disappointed the governor's statement focuses on the rights of the Superferry," he said, "but doesn't say anything about the outstanding legal action."

Bynum also urged the group "to be really cognizant of the image we portray and this time around, make sure the world sees us acting in a calm and dignified manner."

Baptiste, who had participated in Lingle's news conference by telephone, told the group that there are people from the business community and others on Kaua'i who support the Superferry. "Believe it or not, there are other people who want the Superferry," the mayor said.

PUBLIC SAFETY 'NO. 1'

Lingle described the collaboration between federal, state and local authorities on the Superferry as a "unified command." The Republican governor, who had campaigned on making the Islands more friendly to business, also made it clear that authorities, not the Superferry, set the date for a return to Kaua'i.

"The unified command made this decision, Superferry was informed of it (Tuesday)," Lingle said. "There was no option. We didn't ask them their opinion of it. I think it's fair to say they would prefer to go earlier. Every day they don't go it costs them money. But as I told you in the beginning, our No. 1 priority was public safety, and that was a date that we collectively felt comfortable with."

Superferry likely would be unable to offer service to both Maui and Kaua'i during daylight hours, so that restriction would have to be reviewed if the Maui court rules in Superferry's favor. Superferry also likely would have to evaluate its financial status if either court determines that ferry service should be halted during the environmental review.

"We're just monitoring what's happening on Kaua'i and Maui and will make a decision as we go along," said John Garibaldi, Superferry's chief executive officer.

Lingle said at her news conference that the Superferry may not survive in the Islands if it has to wait an estimated eight months for an environmental assessment — or longer if the findings are challenged — before operating again. The review could also lead the state to require a full environmental impact statement, which could take a few years.

"Superferry will be out of business by then," Lingle said. "I don't think there's anybody who doubts that. And I don't think a majority of people in the state want to see that happen."

Meanwhile, Bennett, the attorney general, said he has spoken with state Senate President Colleen Hanabusa, D-21st (Nanakuli, Makaha), about the possibility of a special session of the state Legislature on the Superferry.

Lawmakers could consider a bill allowing the ferry to resume service while the state does the environmental review, essentially bypassing the courts.

SPECIAL SESSION?

Senate leaders have been discussing a special session privately, but mostly in the context of how they would respond if Lingle were to use her powers and call them back. State House and Senate leaders have so far not been inclined to come back for the Superferry on their own.

A special session to help the Superferry could be politically explosive. The House refused to hear a Senate bill last session that Neighbor Island senators believed would have allowed the Superferry to launch while an environmental review on harbors was being done. House leaders would have to explain why that option should be given now, especially after it was fought by both Superferry and the state during session.

Many environmentalists may also object since they had to turn to the courts after failing to get the Lingle administration and the Legislature to order an environmental review.

A special session for the Superferry also may be a precedent for other developers who want to avoid unfavorable court decisions. Lawmakers were criticized in 2006 for a bill that was seen as helping the developers of the Hokuli'a luxury home project on the Big Island, which had been halted in court by environmentalists. But Hokuli'a developers and environmentalists settled the lawsuit during session and the bill died.

Some lawmakers believe the Legislature should help the Superferry after approving \$40 million in harbor improvements for the project.

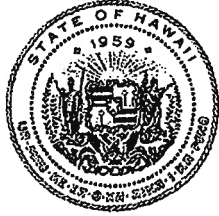
"If the courts rule that they can't do it, then there should be a special session," said state Sen. Will Espero, D-20th ('Ewa Beach, Waipahu). "I support the Superferry."

Advertiser staff writer Christie Wilson contributed to this report.

Reach Derrick DePledge at ddepledge@honoluluadvertiser.com.

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SUMMARY OF STATE LAW CONSEQUENCES

POSSIBLE CRIMINAL CHARGES: Below is a non-exhaustive list of state criminal offenses that can be charged if committed at the Nawiliwili Harbor, along with the applicable penalties:

Assault Against a Law Enforcement Officer: Any person who intentionally, knowingly, or recklessly causes bodily injury to a law enforcement officer while the officer is engaged in the performance of official duties. Penalties start at a mandatory 30 days in jail and may go up to 5 years in prison and/or a fine of \$10,000, if a weapon was used.

Assault: Any person who intentionally, knowingly or recklessly causes bodily injury to another person. Penalties start at possible maximums of one year in jail and/or a fine of \$2,000 and may go up to 10 years in prison and/or a fine of \$25,000, depending on the severity of the injuries caused and whether a weapon was used.

Obstructing Government Operations: Any person who intentionally obstructs, impairs, or hinders the performance of a governmental function by using or threatening to use violence, force, or physical interference or obstacle. Penalties are up to one year in jail and/or \$2,000 in fines.

Disorderly conduct: Any person, with intent to cause physical inconvenience or alarm to a member of the public, engages in violent or tumultuous behavior, makes unreasonable noise, makes a gesture or utters abusive language so as to provoke a violent response, or creates a hazardous or physically offensive condition. Penalties range from up to a \$1,000 fine and may be up to 30 days in jail and/or a \$1,000 fine if the person persists in his conduct after a reasonable warning or the conduct is committed with an intent to cause substantial harm or serious inconvenience.

Terroristic Threatening: Any person who, with the intent to terrorize, threatens by word or conduct to cause bodily injury to another person, serious damage to the property of another, or to commit a felony. Penalties start at possible maximums of one year in jail and/or a fine of \$2,000 and may go up to a maximum of five years and/or a fine of \$10,000, depending on whether a weapon was used and whether a government employee was threatened.

Trespass: Any person who knowingly enters or remains unlawfully upon a premises. The penalty is up to a \$1,000 fine.

Criminal Property Damage: Any person who intentionally damages the property of another. Penalties range from up to 30 days and/or a fine of \$1,000, up to five years in prison and/or a fine of \$10,000, depending on the extent of the damage, along with restitution for the damages caused.

Failure to disperse: Failure on the part of six or more people, who are disorderly, to disperse after an order from a peace officer. The penalties are up to one year in jail and/or a fine of \$2,000.

Harassment: Any person, who with the intent to harass, annoy, or alarm another person, touches another person in an offensive manner, or insults, taunts or challenges another person in a manner likely to provoke an immediate violent response or would cause the other person to reasonably believe that bodily injury or damage to property may result. The penalties are up to 30 days in jail and/or a fine of \$1,000.

Hindering Prosecution: Any person who, with the intent to hinder the apprehension or prosecution of another, prevents or obstructs by means of force, deception, or intimidation, anyone from performing an act that might aid in the apprehension or prosecution of such person. The penalties are up to one year in jail and/or a fine of \$2,000.

Endangering The Welfare of a Minor: Any person who, being a parent, guardian, or other person whether or not charged with the care or custody of a minor, knowingly endangers the minor's physical or mental welfare by violating or interfering with any legal duty of care or protection owed such minor. The penalties are up to one year in jail and/or a fine of \$2,000.

Obstructing: Any person, who having no legal privilege to do so, knowingly or recklessly obstructs any highway or public passage, whether alone or with others. The penalty is a fine of up to \$1,000.

Refusal to Provide Ingress or Egress: Any person who is directed to move by a law enforcement officer so as to provide and maintain a free and unobstructed passageway for persons and vehicles going into or out of any public or private place, and refuses to move. The penalties may be up to six months in jail and/or a fine of \$200.

POSSIBLE INVESTIGATION INTO THREATENED HARM TO A CHILD

If your conduct places a child into a dangerous situation, such as placing a child in a Coast Guard Security Zone or in the course of a vessel, the Department of Human Services could investigate you for such conduct, including pursuant to Hawaii Revised Statutes Chapter 587, the Child Protection Act.

Exhibit 6



Summary of Consequences For Violation Of USCG Security Zone Nawiliwili Harbor in Kaua'i, Hawai'i

Violation of the Security Zone may result
in any or all of the following **CONSEQUENCES**:

- **Federal Criminal Prosecution For (non-exhaustive list):**
 - *Failure to comply with orders related to the security zone:* Any person who knowingly fails to comply with any regulation or rule issued or order given related to the security zone, or knowingly obstructs or interferes with the enforcement of the security zone may be punished by imprisonment for up to 10 years and may, at the discretion of the court, be fined up to \$10,000.
 - *Knowing violation of the security zone and or injuring an enforcement officer:* Any person who willfully and knowingly violates the security zone commits a class D felony and any person who, in the willful and knowing violation of the security zone uses a dangerous weapon, or engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce the zone commits a class C felony.
 - *Failure to heave to or forcibly interfering with a law enforcement action authorized by any Federal law:* 18 U.S.C. § 2237 makes it a felony for a master, operator or person in charge of a vessel to knowingly fail to obey an order by authorized Federal law enforcement officers to heave to the vessel and/or to forcibly resist, oppose, prevent, impede, intimidate, or interfere with a boarding or other law enforcement action authorized by any Federal law or to resist a lawful arrest. Any person who intentionally violates this section shall be fined under this title or imprisoned for not more than 5 years, or both.
 - *Destruction of, or Interference with, Vessels or Maritime Facilities:* 18 U.S.C. § 2291 makes it a felony to interfere by force or violence with the operation of any maritime facility if such action is likely to endanger the safety of any vessel in navigation. Any person who knowingly violates this section shall be shall be fined under this title or imprisoned not more than 20 years, or both. Whoever knowingly and intentionally imparts or conveys any threat to do an act which would violate § 2291, with an apparent determination and will to carry the threat into execution, shall be fined under this title or imprisoned not more than 5 years, or both, and is liable for all costs incurred as a result of such threat.
- **Federal Seizure of Property for Civil and/or Criminal Forfeiture:** Any vessel, including surfboards, kayaks, and canoes, that is used in violation of the security zone may be immediately seized and forfeited and/or may be seized in an action commenced in a U.S. District Court to collect any issued civil penalty that is not paid.
- **Federal Civil Penalties:** Any person who violates the security zone may be liable for a civil penalty of up to \$32,500. Each day of a continuing violation constitutes a separate violation.
- **Immediate Arrest for Any Outstanding Wants or Warrants.**


Exhibit 6

Posted on: Friday, September 21, 2007

Governor heckled over Hawaii Superferry

 Photo gallery: [Gov. Lingle faces tough crowd](#)

- [Honolulu planning for transit ripple effects](#)
- [Maui hearing's focus: whales, invasive species](#)

 StoryChat: [Comment on this story](#)

By [Derrick DePledge](#)
Advertiser Staff Writer

LIHU'E, Kaua'i — Gov. Linda Lingle tried to calm tensions over the Hawaii Superferry at a raucous public meeting last night where she was interrupted by boos, hecklers and scattered profanities.

Most of the people in the standing-room-only crowd of more than 1,100 at the Kaua'i War Memorial were opposed to the Superferry and predicted more protests when the ferry returns Wednesday.

A smaller group that included several Superferry employees and their families showed support for the ferry.

"EIS, EIS, EIS," the crowd stood and chanted at the start of the meeting. Along with Lingle, Barry Fukunaga, director of the state Department of Transportation, and Coast Guard Rear Adm. Sally Brice O'Hara were also interrupted and booed.

Many speakers said the state should wait until courts on Maui and Kaua'i act on legal challenges to the Superferry before authorizing resumed service to Nawiliwili Harbor. "We call on you, we count on you to choose life and righteousness," said Kaua'i County Councilwoman JoAnn Yukimura.

Lingle drew more boos when she said the decision to allow the Superferry to return to Kaua'i has already been made, and she just wanted to hear residents' concerns about a planned federal security zone at the harbor and other issues.

"My answers may not be the ones you want to hear and I accept that," Lingle told the crowd.



People gather in front of the County Building in Lihue on Kaua'i yesterday before a meeting at the War Memorial Convention Center with Gov. Linda Lingle, members of her administration and Coast Guard officials.

JOAQUIN SIOPACK | The Honolulu Advertiser

BARRAGE OF CRITICISM

With Lingle standing behind a podium on stage, speaker after speaker criticized all aspects of the Superferry — from the state's initial policy decision to exempt the Superferry from an environmental assessment to broader accusations that the administration appeared to be favoring corporate interests over the people of the island.

Andrea Brower of Anahola asked the governor if she feels justified in threatening protesters with arrest and prosecution for standing up to the ferry. Brower's question received a rousing ovation.

Lingle replied: "It is our hope and our desire than no one faces a penalty because no one breaks the law."

State Senate Majority Leader Gary Hooser, D-7th (Kaua'i, Ni'ihau), said he hoped the Republican governor heard the message that people shared throughout the night. He said most Kauaians aren't necessarily opposed to the Superferry, but want an environmental assessment first.

"I was not surprised by the emotion. It's a very emotional time. The people of Kaua'i feel like nobody's listening to them," he said. "So when the governor finally comes over and listens, there's a lot of passion."

Hooser said he hopes the Coast Guard and the state delays resuming service next week. "It would be very poor judgment on their part to force the issue," he said. "I would encourage them to wait for the Kaua'i and Maui courts to decide one way or the other." Before the meeting, dozens of people gathered outside the nearby County Building. And many spoke of using the right words and tone to get their message to the governor. Many people are cognizant of how the protests have been perceived on the other islands.

'BAD NEIGHBORS'

Many are also concerned about how the Superferry fight has divided some people here. Barbara Elmore, who is retired and lives in Lihu'e, said she believes she is among the few people who support the Superferry.

"It makes us look like bad neighbors," she said of the protests.

Elmore also said the reaction to the Superferry is symbolic of a deeper sentiment in the community about how life here is changing. "I think people here are fed up with development," she said.

Michelle Fields, a Realtor who lives in Puhi, said she wants more assurances from Superferry executives that they are going to thoroughly inspect vehicles before voyages. She said she is worried that a lack of screening could lead to transport of illegal drugs, invasive species and even ecoterrorism.

"I want to know that the cars that are coming over on the ferry are properly screened," she said. "Each of our islands has a delicate ecosystem."

Dennis Chun, who teaches Hawaiian studies at Kaua'i Community College, said he disagreed with how Lingle has handled objections from Kaua'i.

"It's Big Brother telling Little Brother what to do. To me, that approach just creates more conflict," he said.

But Chun also believes the issue goes beyond an environmental assessment. "It's about where people here see the island now and the direction it's going to go in the future," he said.

LINGLE NOT OFFENDED

The meeting lasted 3 1/2 hours and Lingle stayed afterward and talked personally to people who didn't have a chance to speak at the meeting.

She told reporters later she was not offended by the intensity of the crowd.

"But the passion is very intense," she said, "and what I wanted to try to communicate tonight is this issue of knowingly violating the law is just unnecessary, because there are clearly ways to protest, legal ways to make your point.

"One man said to me tonight: 'But you wouldn't have come tonight if we hadn't jumped into the water.'

"And I told him, 'You're probably right, because of my concern for safety.'

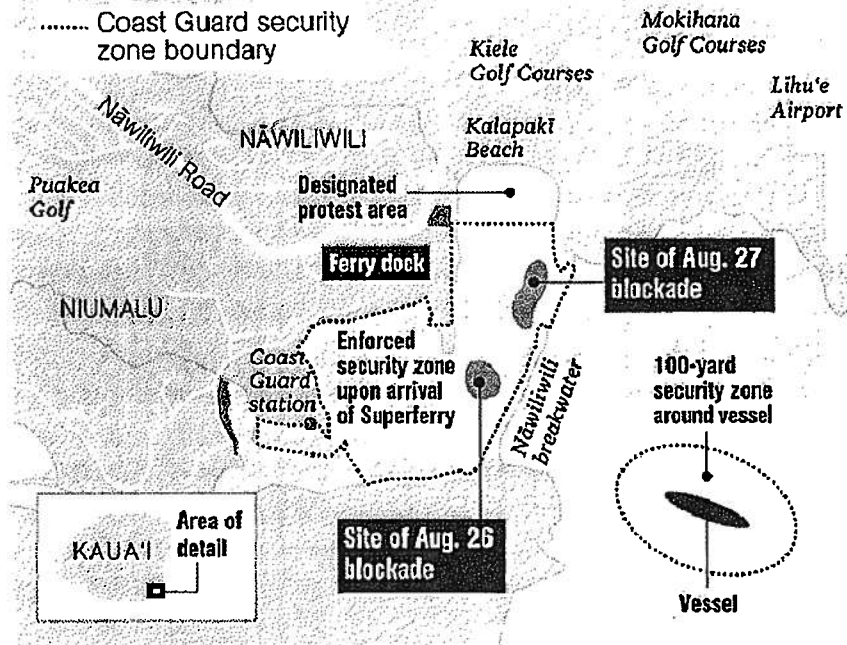
"And that is what brought me here tonight."

The Associated Press contributed to this report.

Reach Derrick DePledge at ddepledge@honoluluadvertiser.com.

...

HAWAII SUPERFERRY SECURITY ZONES



Source: U.S. Coast Guard

The Honolulu Advertiser

Back

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Date: Sat, 20 Oct 2007 06:34:07 -1000 [10/20/2007 12:34:07 PM EDT]

From: Lanny Sinkin <lanny.sinkin@gmail.com>

To: lanny.sinkin@gmail.com

Subject: Superferry hearings

There is an idea floating about that is worth considering.

The two minute limit on speakers is totally inadequate to the situation. One response is to get organized as a hui to make more in depth presentations. If ten people have a 20 minute statement and sign up sequentially, then they should be able to read that statement.

I have been in situations where the moderator of the event, wanting to break up such plans, simply shuffled the sign in cards to eliminate groups. Watch to see whether there is a sign up sheet or sign in cards. If there is a sheet, then the speakers should be called in order, so you can sign in as a group. Also note that sometimes they require all the people to sign in individually, so your entire hui needs to be present when you are signing in to cover that possibility.

If there are sign in cards, then try to sign in as a group, e.g. Lanny Sinkin and group of nine for two minutes each to be introduced by Lanny Sinkin.

I will be working on longer statements and distributing them throughout the day for people to use as they see fit. I will probably be sending out partially completed work to get the ideas into circulation.

Imua!

Lanny

P.S. How about a discussion of what the chant should be this time around? EIS no longer works because the legislation will call for an EIS; it just won't mean anything. How about Im Peach Lin Gle? That would get the message through the media blockade that exists on this issue except for the Island of Hawai'i. One of the first statements I will be circulating will focus on the impeachable offenses committed. The Opinion that accompanied the Cease and Desist Order contains much of that analysis.

P.P.S. Those receiving these emails are an extraordinarily diverse group. For those within this group that support the restoration of the Kingdom, every act taken in the name of the Kingdom (legitimate and authorized) builds the history we will one day present to the world to demonstrate that the Kingdom is restored. At this moment in time, you can take on the task of serving the Cease and Desist Order with the Opinion and Exhibits on public officials, such as the County Prosecutor and Chief of Police, and posting the order in publicly accessible places, such as community bulletin boards and web sites. Then send me a report of that action for the historical documentation that people responded to the King's deputization by taking action. As far as serving public officials, the deputization is not for any law enforcement purposes, solely for service of the Order. That service should take place in a peaceful and respectful manner. If you have friends in law enforcement, please be sure that they get a copy and document that service as well. Law enforcement needs to understand how they have been used to further an illegal enterprise.

If can can, if no can no can.

L.

--

Lanny Sinkin

Oct 22

3

Argument # 1

INVASIVE SPECIES, First. The ferry is painted with a special silicone paint to prevent unwanted organisms from attaching themselves to the vessel. Before the Superferry we got... **Micronia plants, Brown Tree snakes** from Guam, BITING Geckos, spiders, lizards, snakes, spiny-catepillars and mysterious Wildcats, roaming upcountry and Oahu. They all got here without Super ferry!

POINT # 2

DA WHALES! The Ferry does care about whale safety in Hawaii waters and developed a hydrofoil with four moveable jets and no propellers to maim or kill whales. The design of the ship is raised above the water. The Super ferry is also VERY LOUD! Whales have exceptional hearing and can detect loud oncoming vessels. A permanent whale lookout is also up front with binoculars to assist the captain and GPS system to avoid any harm to the Whales. The Pacific Whale foundation has hit and maimed whales in past years, as well as the whale watching boat that caused the death, of one little boy from a bad maneuver, on a whale watch. Seems Attorneys have very selective memories in Court!

Argument # 3-Too expensive. I agree... but holding up operations any longer by all this, certainly isn't going to help

...just because you can't afford to fly FIRST CLASS, doesn't mean they should GROUND the WHOLE PLANE!..

Point #4

As Mike Moran has stated in many letters to the Maui News over the years, tour boats here have flagrantly dumped their waste into the ocean without concern to swimmers, surfers, divers or anyone for that matter. Thanks for your fight Mike! However, The Hawaii Super ferry properly pumps out it's waste in Port in Oahu! Nuff said.

Argument #5"We don't want THEM coming over and taking our opihi and fish". Have you tried onshore fishing lately? It's pretty fished out.. Thanks to a few of our own people hording, rather than getting enough for the family to eat. . People have been packing up Ulua poles , coolers and gear, and FLYING over to Maui to fish for years; a cheaper fare too. As far as taking lava rocks etc... that was stopped once and tighter inspections and enforcement will continue to keep it stopped!

POINT # 7- Any upcountry farmer who claims the Superferry is going to destroy him with invasive State of Hawaii species... sounds like, the only thing he may really be afraid will destroy him, is invasive sales competition from Outer Islands.

We were on the Inaugural voyage Aug. 26th. I talked to dozens of people and all but 2 were locals. Almost everyone was coming or going to visit family or friends. We need more travel options inter-island. Any Island should have plenty of escape access and emergency transportation options, available. I speak on behalf of many friends and family today and have lots more to say, but not enough time.

Thank you

Helen Alipio

NO SUPERFERRY IN HAWAII

I, Katy Bayly, my family and all my friends protest the H-4 Superferry being allowed to operate in Hawaiian waters without an EIS being completed first.

We also protest Linda Lingles attempt to subvert the judiciary's ruling that the Superferry cannot operate in Hawaii waters without an EIS being completed first. How dare she call a "special session" of the Senate, to overrule Judge Cordoza's verdict.

Because of the sneaky short notice outer-islanders (didn't really receive) on this "emergency public forum", none of us has really had time to prepare statements or petitions. Intentional on the government's part? Obviously.

The government has ignored our voice on this issue for 5 years. It is heartbreaking.

Reasons the HSF should not be allowed to operate in Hawaii:

The law is being broken by the government by trying to change the constitution, by overruling the court decision not to let the HSF operate until an EIS is COMPLETE!

Lines 15 – 18 pg one of unnumbered HB, relating to transportation is out of context, since the improvements that were "previously authorized by the government and approved by the lower court approximately two years earlier" were authorized illegally. The PUC "advised the DOT

that important issues should be addressed”, and the PUC admitted that they failed to require a study because “they expected the DOT to consider the issues” and, the legislature has determined this application should be processed expeditiously”

The Superferry has a hidden agenda to transport military personnel and the Stryker brigade to practice war games on Oahu and the big island, according to the March 26, 2005 article in the Pacific Business News. This means more depleted uranium. The Superferry is denying this now, but if allowed to operate, it will happen..... you know it, and WE KNOW IT!!!

This “allegation” is backed up by the FACT that the HSF is built to Military specifications with a 56,800 gallon fuel capacity, why so big, why so high? Why so fast? Boats of the same design and specifications are chartered by the United States military to provide transport military personnel and their equipment. Gee, maybe the HSF can make a lot of extra money on the side, while continuing to gouge the people of Hawaii for the price of a ride to visit their family.

Why was the HSF, if it has no military interest, allowed to give a free ride to “hundreds” of active military soldiers and their families in Oahu on Saturday October 20, 2007, when it’s not even supposed to be operating?

The first page of the unnumbered H.B. bill is based on false and misleading information, as is page 2. These pages are the main arguments to let the Superferry sail.

Environmentally: the HSF burns approx. 12,000 gallons of diesel fuel per round trip, or 1,981 gph which equals 33 gallons of diesel per minute! How much carbon is that being put into the atmosphere? Page 2 of the above mentioned HB bill, states the HSF puts out less carbon emissions than comparable transportation. Not according to the Online ecological and carbon footprint calculator “Footprint”, which calculated a fast moving ferry such as the H-4, puts

our 3 to 4 times as much carbon, as comparable transportation. Where are Linda Lingle, the House and the Senate getting their facts? From the Superferry folks?

We want to see an unbiased report. This fact alone should stop the HSF in Hawaii, and the world. It is a dirty boat.

Where will it dump its waste? Is there a pump don't dump station available at all its ports of call? Or will it just let loose in the middle of the ocean?

Terry O'Halloran, the chairman of the board of the HI Island Humpback Whale Marine Sanctuary, and also on the board of the HSF, has a whale avoidance policy, being accepted as sufficient, of 2 people on deck with binoculars. This is ridiculous, totally insufficient, and unacceptable.

Why did homeland Security come to Oahu to install its newest, state of the art security measures for the HSF, the first state in the nation to get these measures, but homeland security won't tell us what these "measures" are?

The HSF DOES cost more than air travel and car rental combined.

The HSF is not a viable mode of transport for farmers, economically or logistically.

How will the HSF pay for invasive species inspectors, drug inspectors and all the other inspectors they need to guarantee that nothing travels interisland that shouldn't. Will the price of travel on the HSF go up because they need to be more responsible than they thought?

What will happen to people who live on Maui, the Big Island of Hawaii, and Kauai's lifestyle, when they want to camp and all the campgrounds are booked by people from Oahu? Or when their homes are broken into, or our islands precious natural resources are stolen (as already happened on the 1st trip), and the thieves are nowhere to be found. What about the potential influx of homeless people from Oahu who seek new places to live on the outer islands? We don't want more cars, more traffic, more trash etc.

In British Columbia, a ferry ride costs \$12.00 per adult. Why the high cost here?
Because the HSF operating cost is too high.

It's not going to be economically feasible, environmentally safe in any way, or helpful to the Hawaiian people as an "alternative mode of transportation."

The HSF is too big, too dangerous, too dirty and too dishonest.

We don't need it and we don't want it!

Send it to the mainland, where they built it!

October 22, 2007

Statement given by Diana Bergantino, Kihei resident & homeowner

I support an environmental impact assessment be conducted by the Super Ferry prior to doing any business in Hawaii. I do not support legislature overriding court rulings that are based on written laws to protect the people and our environment.

As a home owner, I had applied to enclose my lower lanai. I had to wait almost 2 months for the county to accept my exemption regarding an environmental assessment on our enclosure. No business should be above the laws and regulations of what the people of Hawaii must follow. They are written to protect and preserve our environment. Our environment is the main reason many people come to Hawaii to vacation and live. If we destroy what we have, we will lose not only all that makes Hawaii so special and beautiful, we will lose the reason tourist come here. This will make a huge impact on our economic state on all the islands, one the Super Ferry will not be able to make up for. Why would the Super Ferry not have the same regulations as the People of Hawaii?

Is it because I am only a middle class homeowner that I am required to follow the laws of this state? What message is this sending my high school children who are following this in school? What message is this sending my step-daughter and her husband? What message is this going to send to their unborn son?

The bottom line is that expert testimony has proven, beyond a doubt, that the Super Ferry will have a negative effect on our marine life in Hawaii if it is permitted to conduct business according to its' business plan. Do not allow the Super Ferry to run during the environmental impact assessment process. Do not allow the Super Ferry to run above 15 knots at any point in our Hawaiian waters. Protect our Islands...this includes the Marine life in our surrounding waters. Enforce the laws you have written to protect the people and the environment.

Mahalo for your time.

As Executive Director of Maui Tomorrow I strongly oppose the operation of Hawaii Superferry while it undergoes an Environmental Review. To allow Superferry to operate during this process clearly violates unambiguous Hawaii law.

I urge the Legislature not to pass this unconstitutional special legislation for one single business. If legislation is passed and Superferry is allowed to begin service, I feel compelled to ask for conditions to limit the speed at which this vessel travels through Hawaiian waters, due to the high risk to humpback whales, a federally protected endangered species.

This fast ferry is unlike any other in Hawaiian waters; traveling at speeds of over 35knots. The US Coast Guard classifies "high speed" vessels as any traveling over 32knots; most vessels in Hawaii, including cruise ships, barges, and tankers, travel at **maximum** speeds of 20knots.

As stated in 11 days of testimony by recognized whale experts before Judge Cardoza, Superferry's plan of reduce speeds of 25knots when traveling through Sanctuary waters is clearly not slow enough.

Extensive research shows that at 18knots whales strikes result in the animal's death. NOAA recommends speeds of no more than 13knots when traveling through humpback whale breeding areas.

Hawaii Superferry's proposed speed is unacceptable and should be limited to 13 knots when traveling through a national preserve for an endangered species; please include this same 13 knot limitation to the first 10 miles of exits and entrances to Honolulu, Kahului and Nawiliwili harbors.

The Supreme Court stated in its unanimous decision, "The Superferry presents particular risks that are not borne by the existing methods of transportation."

Please don't abandon the protection of the environment to the same administration that has been dedicated, for many years, to minimizing legitimate concerns about the Superferry project. Consider these risks and their consequences as you decide the fate of Hawaii Superferry and this state's environmental future. Please add meaningful conditions to this bill.

Thank you.

Irene Bowie/Maui Tomorrow Foundation, Inc.

PO Box 299, Makawao, HI 96768

808.268.0303

Submitted 10/23/07

HI Superferry

Monday, October 15, 2007

HI Superferry : Conditions to Operate

Until an EIS is completed and approved:

First, the Superferry should not be allowed to operate between the Hawaiian islands any faster than ~~15~~ ¹³ knots per hour.

Second, until an EIS is completed the Superferry should be a POFF which is an industry standard that means Passenger Only Fast Ferry. Vehicles should not be allowed to go interisland on the HI Superferry until the EIS is completed. If cars are allowed then there has to be a high powered undercarriage wash of each vehicle at the harbor before it boards the ferry.

Third, the Superferry should not be allowed to dump its refuse in Hawaiian waters.

Fourth, "Martial Law" in Nawiliwili Harbor should be lifted and the canoe clubs there and the canoe clubs in Kahului Harbor should be allowed to operate uninterrupted under their prior schedules.

~~These are the conditions, HI Superferry, take it or leave it!~~

Aloha, Brad

Posted by MauiBrad at 6:39 PM

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HI Superferry

Monday, October 15, 2007

HI Superferry...Would Lose Money w/Private Sector Business Only

The activists on Kauai helped me find the following. It is a thumbnail income statement on the Superferry based on information disclosed in the recent court case. Larry's got a great blog on this.

From: <http://disappearednews.com/>

Monday, October 15, 2007
Superferry as Trojan horse
by Larry Geller

Why didn't I think of that? Joan Conrow's post today on KauaiEclectic, **Musings: Ferry Fiascos**, describes ferry disasters in other places such as Vancouver, BC. Please read her entire article, but here is the closing paragraph:

These scenarios could be flukes in the ferry world, or cautionary red flags that we might want to consider. Of course, it's hard to know, without a full Environmental Impact Statement, whether Hawaii Superferry is a true gift, or a Trojan horse.

Trojan horse! That's the phrase my brain could not come up with the other day when I wrote about how the Superferry may be coming here as a civilian vehicle but may have a larger military purpose.

How can we tell if the Superferry is really a military operation? Short of being a fly on the wall or an NSA phone tapper, we can't know what secret talks have been held. But should the ferry ply our waters at a loss, it's a hint that the money will be coming from somewhere.

Earlier I did a back-of-the-envelope calculation on how profitable the ferry could be. But here is another, and better, analysis done by Prof. Dick Mayer that has been circulating via email. Follow along and see how the Superferry could well operate at a loss for the civilian portion of its business. I'll come back at the end with my take on the numbers.

Blog Archive

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HI Superferry: Maui

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Superferry NO!...Thank you Judge Cardoza

HI Superferry and "15 knots" in court yesterday.....

Open letter to the Kauai Superferry Protestors

Ok, here are the estimates (paraphrasing the original email):

Revenues

According to the company, they expect an average load of about 400 people, and 110 vehicles per trip.

400 passengers x \$72 = \$28,800 110 vehicles x \$65 = \$7,150

Total \$35,950 per trip

Total trips scheduled per week 26

Therefore estimated revenue per Superferry would be \$35,950 x 26 = \$934,700 per week.

Expenses

John Garibaldi, Superferry's president and chief executive, stated that the weekly operating cost while the ship is idle and docked at Honolulu Harbor is \$650,000 per week.

The current price for marine diesel fuel in Honolulu is \$740/metric ton or at least \$2.07 per gallon.

If fuel consumption per one way trip is about 6,600 gallons, Kauai or Maui, so the average fuel cost (one way trip) is 6,600 x \$2.07 = \$13,662 At 26 trips per week x \$13,662 = \$355,212 per week for fuel.

So the operating cost including fuel would be \$1,005,212 per week.

Oops.

So based on Superferry's projected load factors, there is an operating loss of \$70,512 per week, or \$3,666,624 per year.

Even today, a few million bucks is real money. How could the Superferry break even or turn a profit? You got it—pick up that military business.

Or raise fares, of course. Since I can't rent a car at the other end of a ferry ride, I would probably stick with cheaper air fares if the ferry charges too much.

Or maybe civilian passengers aren't the point here. If it's a Trojan horse, then maybe this whole thing is just a way to get those presumably lucrative military contracts. A **Pacific Business News** article from 2004 (yes, three years ago) revealed that part of the business model was to

Seek defense business, hauling vehicles between islands at night for military exercises. The ferries are being built with specially reinforced vehicle decks especially for this, though the reinforcement also means that big rigs can be driven onto the ferries and it won't matter in which lane they park.

► **September** (11)

About Me

MauiBrad

View my complete profile

Illusions as Law

Oh what a tangled web we weave,
When first we practise to deceive!

Sir Walter Scott, *Marmion*, Canto vi. Stanza 17.
Scottish author & novelist (1771 - 1832)

The Attorney General, who joined in the Governor's conspiracy to continue Superferry operations in violation of the law, is now proposing to the Legislature a bill to legitimize the continued operation of the Hawai'i Superferry.

In essence, this bill would remove the harbor improvements made for the operation of "large capacity ferry vessels" from the projects falling within the existing environmental laws and place such improvements within a new law. The new law would allow the use of such improvements by such vessels while an environmental analysis is prepared, i.e. abolish the "condition precedent" requirement of the old law.

As a practical matter, such a law would invalidate all agreements made, certificates of operation issued, and other administrative procedures and actions taken under the old law.

The Attorney General tries to glide past this point by stating:

Agreements with respect to the operation of a large capacity ferry vessel company, including a large capacity ferry vessel company operating agreement, entered into between the State and a large capacity ferry vessel company, may be enforced as written or as executed or re-executed.

Proposed bill at page 5, lines 7-12.

The problem for the Attorney General and the Legislature is that there is no such thing as an existing agreement made between the State and a large capacity ferry vessel company. The concept of a "large capacity ferry vessel company" had no legal meaning until this new law was proposed and will not have any such meaning unless this new law is passed. So today there cannot be an agreement "between the State and a large capacity ferry vessel company." There is, therefore, no such agreement that "may be enforced as written or as executed or re-executed."

In an effort to hide what is being done, the Attorney General left out the only real possibility – an agreement that is made in the future, if this law is passed. I “large capacity ferry vessel company” is defined in a new law, such a company can seek to be considered as falling under the new law and not the existing environmental laws.

Under the new law, any such agreements would have to first determine that the Hawai'i Superferry met the criteria for application of the law, i.e. qualified as a large capacity ferry vessel. Such a determination was not part of the earlier processes, so a new process would have to be undertaken.

The Attorney General knew that passing a law specifically for Superferry would look too much like special legislation to overturn a court ruling and probably be a violation of the privileges and immunities section of the Constitution, so he made the law generally applicable to boats of the Superferry type.

In doing so, however, he made qualification for application of this law, rather than the normal environmental law, conditioned upon a determination that the boat in question fits the general category.

There are no administrative rules for implementing this new law. Those rules must be adopted before the law can be implemented. Those rules will define how a boat qualifies to be under the new law and the procedures by which such qualification is determined.

Otherwise, any boat could come into Hawaiian waters claiming to be a large capacity ferry vessel and not subject to environmental laws and the burden would be on the general public or the State government to disprove that claim and stop the boat's operation.

Ask yourself: If Company B shows up and says “We operate large capacity ferry vessels and claim the exemption from the need to prepare environmental studies prior to operation”, how will it be determined that such a company falls within the new law, unless there are administrative procedures and rules for implementation of the new law first?

If such administrative procedures and rules are required, will the Legislature have to pass another law or amend the Attorney General's law to exempt the

Superferry from the application of the new procedures and rules in order for Superferry to operate before such procedures and rules are adopted? That is what the Attorney General tries to do by including agreements made under the old law, as if they automatically fall within the new law.

If the legislation automatically qualifies the Hawai'i Superferry, Inc. and its boats for the special treatment of this law and requires other similar boats and companies to go through a qualification process before receiving the benefits of the new law, then the new law violates the special privileges and immunities clause of the Hawai'i Constitution and the equal protection clause of the United States Constitution.

Alternatively, "large capacity ferry vessel" is synonymous with the Hawai'i Superferry. Then the law is a poorly disguised attempt to overturn a final ruling of the court and, thereby, violate the separation of powers requirement.

How tangled the web becomes.

More information on historical perspective of fast ferries around the world at www.hisuperferry.blogspot.com.

Aloha, Brad
Kahana, Maui

These are
A couple of recent
documents by
Lanny Sinkin,
Atty at Law, HI and U

Who Stole the Power?

In the *Plaut* case, the United States Supreme Court discusses at length and quite forcefully the requirement that each branch of government act within the scope of its powers and not usurp the powers of another branch. You can read that analysis in the Opinion that accompanied the Cease and Desist Order.

Does the *Plaut* case apply to a state legislature?

ARTICLE III THE LEGISLATURE LEGISLATIVE POWER

Section 1. The legislative power of the State shall be vested in a legislature, which shall consist of two houses, a senate and a house of representatives. Such power shall extend to all rightful subjects of legislation not inconsistent with this constitution or the Constitution of the United States.

The *Plaut* case illuminated the history and general principles underlying the Separation of Powers doctrine, examined the expression of those principles in the United States Constitution, and applied those principles and the constitutional scheme to the facts of the *Plaut* case.

That is the general judicial process when constitutional issues arise.

Plaut is applicable to the state analysis, particularly because the State Constitution says that the legislative "power shall extend to all rightful subjects of legislation not inconsistent with this constitution or the Constitution of the United States." Article III, Section I.

The Supreme Court in *Plaut* is enunciating a general principle as well as applying that principle to the United States Constitution and its implementation within the United States Government. That general principle is that, when a document defining the structure of government separates the powers of government into different branches of government, each branch must respect the integrity of the other branches

* 514 U.S. 211

Ed Plaut vs. Spendthrift, 1995

and the system as a whole by exercising only the power given to that branch.

The Hawai'i Constitution contains almost exactly the same words in delineating the separation of powers as does the U.S. Constitution. See the Addendum to the Opinion accompanying the Order to Cease and Desist. The same analysis would apply in a state court as applied in *Plaut*.

In this case, the Governor showed a complete lack of respect for the Judicial Branch and the decision of the Hawai'i Supreme Court.

The Supreme Court made a very simple decision: Section 343-5 applied to the question of whether the State should have prepared an environmental assessment for the harbor improvements necessary to allow the Hawai'i Superferry to operate and to the operation of Superferry, which would not happen absent the State improvements.¹

Applying that law to the facts of the case, the State was required to prepare such an environmental assessment.

Once the Supreme Court announced that decision, the law was clear. Under 343-5, the requirement to prepare an environmental assessment triggered the section of the law that requires completion and acceptance of that assessment prior to the implementation of the project.

That should have been the end of the matter. The only lawful action possible after that decision was initiation of the environmental assessment and cessation of all operations by the Hawai'i Superferry.

Unfortunately, the Director of the Department of Transportation stepped in to render his opinion that the Hawai'i Superferry could continue to operate while the State prepared the environmental assessment.

¹ The Governor and other proponents of the Hawai'i Superferry consistently ignore the fact that the Supreme Court found that even if the only question was whether the harbor improvements should have been subject to an environmental assessment, excluding the operations of the boat, the State Department of Transportation erred in not requiring an environmental assessment just for those improvements.

While this position directly contradicted the law, the Governor embraced this opinion.²

The Governor, the Department of Transportation, and the Hawai'i Superferry then engaged in a conspiracy to violate the law by putting the boat into operation.

At that point, the Executive Branch supplanted the decision of the Hawai'i Supreme Court with a contradictory decision. This act was the first major violation of the separation of powers doctrine. With the law and its implications clear beyond question, the Executive Branch took it upon itself to both create new law (the boat can operate without a complete environmental assessment) and to overturn a final judicial decision (the boat cannot operate without a complete final environmental assessment).

The usurpation of both the legislative power and the judicial power by the Executive Branch is simply dictatorship, violated the Constitution and laws of both the State and Nation, and violated the Governor's oath of office to uphold the Constitution and laws.

The usurpation of the legislative and judicial power for purposes of engaging in a conspiracy to violate the law is an impeachable offense.

The Legislature sat silently watching the Governor steal their power.

The Supreme Court had no action before it allowing it to protect its power.

Finally, the Circuit Court in Mau'i stopped the conspiracy by entering an injunction and voiding the harbor use agreement for that jurisdiction.

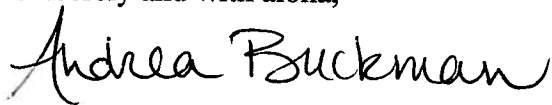
Now the Governor wants the Legislature to legitimize the Governor's illegal and unconstitutional actions by granting a special exemption to the Hawai'i Superferry that will allow the Superferry to continue operating without the State having completed an environmental assessment.

² Apparently without consulting the Attorney General or warned by the Attorney General not to consult him.

To Whom It May Concern:

I would like to make it known that I do not support a special session that would allow Hawaii Superferry to run while the EIS is completed. It should be obvious that the environmental concerns being voiced regarding invasive species, humpback whales, and overuse of already limited and crowded natural resources on the neighbor islands could be realized on even one trip (As evidenced by the trucks taking rocks from Maui on the first trip). The blatant disregard for the environment is unacceptable, and shows only that Governor Lingle et al. do not have the islands' best interests in mind, and is more concerned about a private business profiting. If the EIS results determine that the Superferry is not a threat, then I can only hope that the prices and seasickness and time of travel will cause the business to go under. I do not support the Superferry at all, and if they are going to be a reality, then they should have to go through the proper procedures that all business receiving public monies must go through. I do not support a business that does not care about the place where it conducting business. It is apparent that they do not care about the ramifications their "service" will most likely inflict on the neighbor islands. Please honor the Judge Cardoza's ruling, as he earned his position because of his experience and respect for the judicial system. The EIS will only delay the profits of Hawaii Superferry, which is not nearly as important as forever altering the ecosystems of our precious and already periled natural resources. As a citizen working in the conservation field, I will be the one to try and repair damages done by transporting citizens and their vehicles interisland without extensive preventative measures in place. If Hawaii Superferry is allowed to run while the EIS is conducted, it will be too late to prevent the spread of invasive species. Logistically, the whale protection efforts advertised by Hawaii Superferry are not realistic or sufficient (I have worked as a whale researcher as well and know this to be true from experience). Also, we chose to live on neighbor islands because we prefer to be less crowded and have natural spaces to enjoy. The desires of Oahu residents should not be placed over those of the other islands. Rushing this potentially archipelago-altering decision makes no sense. PLEASE uphold the ruling and force Hawaii Superferry to comply with Hawaii's environmental laws so that a bad precedent is not set for future similar situations.

Sincerely and with aloha,

A handwritten signature in black ink that reads "Andrea Buckman". The signature is written in a cursive, flowing style.

Andrea Buckman

John Cahill
P.O. Box 1339
Haiku, Hawaii
96708
573-5478

10/22/07

Testimony on Hawaii Superferry

Thankyou for coming to Maui. You have come to outer islands and I suppose many of you are curious as to why there is some much opposition to this proposed Superferry system.

For myself, I do not see why there is so much support for this Superferry operation, especially before a comprehensive study can be done to determine the potential impacts it may bring.

It seems that to be in support of this proposal at this point in time one would have to 1) accept the assumed benefits of the Superferry proposal and 2) ignore the potential impacts that its operation may bring.

In order to go into defacto partnership with the Hawaii Superferry corporation it seems that we have even overlooked taking the first basic step in entering a partnership which would be to study the books.

In a prior meeting on Maui, I believe it was before the county council, I made comparisons between the Washington State Ferry System and the proposed Hawaii Superferry system. I compared vessel sizes and capacities, travel distances and conditions, and the factors involved in securing consistant ridership. It seemed to me that empirically it will be more difficult for the Hawaii Superferry system to survive financially than it is for the Washington System. Without paying rent to any harbors for dock space and with most of the vessels already owned by the system, the Washington State Ferries require a 40% subsidy to survive. How can we go into a partnership without studying and scrutinizing the business assumptions being make by Hawaii Superferry. Corporatie officers are insulated from financial liability so they can make all the claims they want and the only ones that stand to lose from their failure will be us, the taxpayer.

The Lingle administration has make up its mind that the Superferry is good for us. This is not an objective decision as the objective study has not been done. It is a political decision and one that is now under diress.

It therefore seems doubly absurd to me that we would the allow the executive branch of this state government, under diress on this issue, to be the one to dictate the terms of the proposed iterum operating agreement.

I observed the kind of inspection program the Superferry used on its first trip to Maui. I went down to the dock to observe the process. First, the ID's were checked. Next the cars were pulled under the inspection tent where some people were asked to step out of their cars and cars and trunks were inspected. I was a little agitated to see that no one was inspecting the vehicle under carriages so I called out to some employees inside the fence. They directed my eyes to a third station on the path towards the Superferry. Sure enough, there was one Superferry employee with a mirror on a pole stationed at a third station. The problem is, only two cars were pulled over there in the final 45 minutes

John Cahill

of inspections that I observed. The rest of the cars, including many off road type vehicles drove right by the station. This should not be a spot check station.

It has taken years to get laws in place to protect our environment from businesses who's first concern is profit.

This is not a popularity contest we are holding here today. It is not a question of how many want the ferry and how many don't. Environmental legislation is meant to protect the environment from ill conceived ideas no matter how popular they are.

If you are not going to stand up for the proper sequence by denying operation until a full EIS is complete, I ask of you to make sure that you adequately protect our Aina in the mean time. This would mean thorough and independant inspections of all vehicles before they are allowed to board the ferry. Secondly, guarantee the safety of the whales as they give birth in our supposed whale sanctuary by setting strict speed limts, and third, address the issue of the potential of military transports as it pertains to potential depleted uranium contamination on these vessels that are intended for transport of ordinary citizens.

Thank you for your time.

From: ashcoftop@aol.com

To: ashcoftop@aol.com

Subject: Fwd: Testimony for Ferry bill held over several days between Oct. 21-22, 2007

Date: Sun, 21 Oct 2007 11:37 am

-----Original Message-----

From: ashcoftop@aol.com

To: testimony@capitol.hawaii.gov; sens@Capitol.hawaii.gov; reps@Capitol.hawaii.gov;
governor.lingle@hawaii.gov; ltgov@hawaii.gov

Sent: Sun, 21 Oct 2007 11:36 am

Subject: Testimony for Ferry bill held over several days between Oct. 21-22, 2007

Testimony of Alfred Ching Jr. for Hearing held at the below address and time and for the below stated agenda.

NOTICE OF INFORMATIONAL BRIEFING

DATE: Monday, October 22, 2007
TIME: 3:00 p.m.
PLACE: Henry Perrine Baldwin High School Auditorium
1650 Kaahumanu Avenue
Wailuku, HI

A G E N D A

The Committees will be hearing a Senate Bill that will be introduced at the convening of the Second Special Session of 2007 on Wednesday, October 24, 2007. The subject of this bill will be to permit the operation of an inter-island ferry service in the State of Hawaii while an environmental impact statement is being conducted, while at the same time, ensuring that there is adequate protection of the environment. The bill will also establish an oversight task force for the purpose of examining the impact of inter-island ferry operations on the communities, environment, and harbor and other infrastructures.

My name is Alfred Ching, Jr.
My address is 2718 Puuhoolai Street
Kihei, Maui, Hawaii 96753
Telephone: 808 874-9426
Cell phone: 808 385-9919
E-mail address ashcoftop@aol.com

Background Information:

I have lived on Maui since 1988 and prior to that on Oahu. I have owned several businesses on Maui and the last one was a Cafe called Ashley's Café located in Kihei, Maui. My wife and I are moving to Oahu to care for my mother and was counting on using the ferry service to help us move. My family roots goes back to the 1880's here in the Islands. I am also a registered voter. A restaurant owner over the past few years and also a licensed commercial fisherman specializing in bottom fish and for the past 14 years.

This testimony is to support of the Superferry traveling at high speed during whale season.

I used to fish with a 20' Boston Whaler Outrage, outfitted with twin 88 horsepower Evinrude outboard engines. Top speed in calm seas is 40 MPH. I usually leave at daybreak or first light on my dat fishing trips and return before sunset. This is so I can watch for obstructions when I drive the boat early in the morning. I travel to my bottom fishing spot as fast as the conditions will allow me, this is anywhere between 20-35 MPH. Most of the time

its above 30 MPH. My fishing partners call it a white knuckle ride. Every minute we save in travel time may mean more fish in the box or more fishing time. The winds come up early and chases you north toward Lahaina and that area is less productive.

I have made more than a 100 of these trips over the years. At the speed that we travel we are watching for whales, debris, other boats or any other thing that might be in our path. We have spotted whales several miles away and have been able to make slight changes in course to avoid them, I am also watching the pattern of the swells and the wave to be able to steer a path through all of this. I have managed to spot whales and avoided them over all these years. Some days on a run of 10-15 miles we might come across 3-5 pods of whales that we spot. Not all that we spot do we actually have to change course for. Travelling at high speed to and from the fishing grounds I have never come closer then the 100 yards or 300 yards in calving areas. I also have never been surprised by a whale popping up next to me. If you are paying attention and actively watching for whales or other objects you will and can avoid them on the ocean.

If a vessel traveling at high speeds and has lookouts or spotters looking for whales they should be able to spot the whales in their area and steer a course to avoid the whale or pod. The lookout positions on the Superferry is 40 feet above the water and the spotters have a stable platform to make their observations from. They should be able to spot the whales or any other floating objects that cross their path a lot easier than me and my fishing partner that were only 6' above the water. The Superferry is maneuverable enough to alter its course by a few degrees to avoid the whales or objects. I have done the math a hundred times or more and made the course corrections so I know it is possible to avoid hitting a whale while under high speed.

I do not think that the whales are in any more danger then they already are. The whales are learning that boats and people are friendly and they are learning to come near these sightseeing tour boats that sell whale watching tours. Whales are curious and will come close to slow moving boats or boats stopped in the water. A whale watch boat injured a calf last season and these guys are supposed to be the professionals, a Pacific Whale Foundation boat injured the whale calf, did they let money get in their way of better judgement of keeping to the 100 yard rule or 300 yard calving rule. The customers on a whale watch boat sometimes tip the crew for good trips, could this potential of extra money may have been cause for the accident.

There is a big difference in avoiding the whales and whale watching.

The major difference is that some boats have lookouts and plan to avoid whales, while the sightseeing whale boats have lookouts to spot the whales and plot an intersecting course to come as close as the legally can. They start off at the legal distance cut the engines or put the boat in neutral and hope the whales will come up next to them. It's called giving the customer more for his/her money and also increasing the tip money at the end of the trip. Thru the years I have seen a lot of visitor's pictures where the whale in no more than 20 or 30 feet from the boat, I was in the restaurant business and talked to a lot of my customers. The law says that you must be at least 100 yards away and in certain calving areas 300 yards away.

I can only speak from my experience, but in my years of being on the ocean I have never come close to a whale while running at high speeds.

There are a few commercial boats running faster than 13 knots. Some of the boats that travel faster than 13 knots are the day tour boats that travel to Molokini, the whale watch boats at the end of their trips, the Lanai ferry, charter fishing boats going to or coming home from the grounds. If you should restrict the speed of the Superferry then you should restrict the speed of all vessels traveling in the same waters. Size and speed of the vessel matters alot, but what matters most to keep accidents from happening or collisions with whales or other objects is paying attention to the driving and having proper lookouts doing their job and communicating all necessary information to the helmsman on a timely manner.

Please do not restrict the speed of the Superferry, I am sure they can avoid the whales. If they should have an accident with a whale then it would only have been an accident. If the superferry has to many accidents then have them change their operating speed or course or both. Do not restrict them before they can show what kind of track record they can produce.

Our country has always operated on the principle of innocent until proven guilty.

If you have not been on the ocean going at high speed and in full control of that watercraft it can be related to driving a car. You will have less accidents if you follow all the road rules, no drinking when driving, no cell phone

use or any othe type of distraction. If you paid 100% attention to your driving and focused on driving you would have less of a chance of being in an accident. Automobile accidents and loss of life is an accepted thing in our society today and most of these accidents would not happen if the drivers paid attention to their job of driving the vehicle. Hopefully you can relate to this example. The same holds true for water travel.

Alfred Ching, Jr.
2718 Puuhoolai Street
Kihei, Maui, Hawaii 96753
a Registered voter

E-mail: ashcoftop@aol.com

Email and AIM finally together. You've gotta check out free AOL Mail!

Testimony on Hawaii Superferry Bailout Bill
Karen Chun, 87 Lae St. Paia Maui HI 96779. Phone: 283-3049

Thank you, Senators for coming to Maui to hear our concerns. My name is Karen Chun

There's a mother whale who brings her baby each year right between Kahului Harbor mouth and the 2 mile buoy. I think they hear the slow-moving barges and get out of the way. We paddled right over them and never saw them because they hang out 12 inches below the water without moving. My stoker actually hit the baby with his paddle. But they don't have experience with 34 knots. The Superferry will run right into them and kill them. And my heart will be broken.

This law is flawed. Last night in a few hours, I made a 2 page list of outright lies, bad science and flaws with unintended consequences in it.

The 50 pages of this law would need a month at least to find all the errors and implications. Rushing it through is irresponsible.

To let Lingle set mitigations is crazy. She's demonstrated that her idea of a good mitigation is NO mitigation.

At the very least the **Maui Tomorrow Conditions should be adopted.**

And Parking Lots should be provided on each island. On 'Oahu passengers parked their cars on residential streets. Here on Maui we had people parking at our already overcrowded airport parking lot as well as shopping center lots. It is not fair to dump this problem on our merchants.

Posting bond against damage is a good idea. But **how are we going to prove that HSF was the one who hit a whale we see floating dead or that HSF introduced the invasive specie to Maui?**

This law **opens the door for any governor to give the go-ahead for a project without doing an EIS first** because right there in the first paragraph of the law it says that when this happens, "it is not the intent of the legislature" to have the EIS requirement stop them from operating. You've just gutted HRS 343..

The task force is a joke. **The Task Force should have 3 members from each island HSF will go to appointed by the County Council of that Island ...PERIOD.... and it should have the power to shut down operations instantly if any negative effects are seen.**

If the Superferry operates without an EIS, it will inflame the neighbor islands and there will be massive protests. On Maui we've trusted the judiciary and we've trusted you to protect us from Lingle's greed. With Lingle's Unified Command with their masked, armed men and military with machine guns, we could see a Kent State type incident here. **One of Lingle's storm troopers with their finger on the trigger will make a mistake, get excited and then...someone will die.** It will be on the legislature's head as well as Lingle's if this bill passes.

So I am begging you:

**If Lingle calls a special session, don't pass this bill.
Use the special session to IMPEACH LINGLE.**

False Statements and Flaws in the Proposed Superferry Bailout Bill

1. The title is not descriptive.
2. We all know this is a special interest bill being passed so HSF can continue flouting HRS 343. By pretending it is a bill for “large ferries”, you open the door to any company coming into Hawaii and starting a ferry service prior to doing an EIS. Probably no one will because they, unlike HSF, know that the economics just don't make sense. But you are leaving the door open. I also doubt that any judge would believe this isn't a bailout bill for one specific company and therefore unconstitutional. So this subterfuge really isn't necessary.
3. Section 1(a) Paragraph 2: **“approved by the lower court approximately two years earlier.”** No lower court approved it. They simply declined to hear the case based on plaintiff standing. Subsequently this was overturned.
4. Section 1(a) Paragraph 2: **“such an occurrence is not explicitly contemplated in chapter 343, Hawaii Revised Statutes, is not consistent with the intent of the legislature, an as such, the policy that should be adopted under law must be amended and clarified.”** The law was written ESPECIALLY for a new project. Saying that this situation is not “explicitly contemplated” is nonsense. Saying the legislature didn't intend that large ferries do an EIS before commencement of operations is simply not true.

If you mean a situation where the Governor deliberately flouts the law, a timid judge rules no standing when the State is sued and subsequently that judge is corrected by the Appeals Court and the Governor is told to do an EIS – well this is EXACTLY what the law was written for.

If you pass this part of the law, you are basically saying that any time Gov. Lingle (or any governor) wants to ignore HRS 343, she will get away with it because “It is not explicitly contemplated” that the governor will ignore HRS 343.

5. Section 1(a) Paragraph 3: **“furtherance of the legislature's goal of promoting a sustainable future for its residents, a large capacity ferry vessel company would also utilize technology that produces less carbon emissions when compared to inter-island aircraft transportation with the same carrying capacity.”**

This is utter nonsense. Since when would you transport a car via airplane? If you compare passenger fuel use between interisland air and HSF, the airplane uses LESS fuel per passenger mile than HSF and is thus emits less CO₂. The HSF goes about 3 times as fast as an interisland barge. Since fuel consumption goes up with the cube of velocity, HSF will use 27 (TWENTY SEVEN!) times as much fuel and put 27 times as much carbon into the atmosphere. HSF is BAD FOR SUSTAINABILITY and BAD FOR GLOBAL WARMING. And this bill's statement is BAD SCIENCE.

6. Section 1(a) Paragraph 3: **“between islands in a very short period of time”**. 3 hours instead of 9 hours. Not a real big difference when you take into account that HSF will arrive after the morning markets which is times wrong for our farmers.
7. Section 1(a) Paragraph 3: **“produce...lower cost”** Our farmers and business people testified that since they had to send a driver over with their produce, wait until the next morning for the

market (which they missed due to the HSF coming into 'Oahu in the afternoon) and also because there is no way to come back without spending the night, that this would be considerable more expensive than shipping via Young Brothers.

8. Section 1(a) Paragraph 3: **“ferry...would foster diversified agriculture...”** This statement is simply not backed up with any facts whatsoever.
9. Section 1(a) Paragraph 3: **“immediate operation of...ferry...in the public interest...continue...while environmental impact statement are conducted”** There is no evidence to support this statement.
10. Section 1(a) Paragraph 6(1) Oversight Task force has no power, is composed in the great majority of Lingle appointees.
11. Section 2(b) Sets no time limit on completing EIS. Makes no provision for HSF to pay for damage it causes because and EIS wasn't done first. Makes no provisions for halting HSF, if it turns out it is creating serious damage.
12. Section 2(c)1 **“critical importance of the inter-island ferry service”** There is no critical importance. We have lived without this ferry service ever since the Hydrofoil went bankrupt and we can continue living without it while it does an EIS. This is just nonsense.
13. Section 2(d) **“at the same time, protect Hawaii's fragile environment”** This is so despicably hypocritical, that it needs to be removed in order for the judge who is going to be asked to strike this law down as unconstitutional will probably have a heart attack laughing so hard at the sheer brazen baloney.
14. Section 3. If the EIS is found lacking, HSF can continue operating. There is no incentive ever to do a real EIS with effective mitigation measures.
15. Section 4 does not state what measures Governor Lingle is to require of HSF. Since her original bill contained absolutely NO MITIGATION measures, one assumes she will likely impose NO MITIGATION MEASURES. This leaves the environment and neighbor islands completely unprotected.
16. All drafts of the EIS, comments, review, and notices of hearings or meetings shall be posted prominently on the State website so that the public may access all relevant documents easily.

(In the past, DOT has sent 1 copy to the library where it is too expensive for us to access and copy it. It is extremely important that the EIS and all associated events and documents be posted prominently and quickly on the State Website.)

17. **“(e) All statements and other related documents shall be made available for inspection by the public during established office hours.”** Change this to: **“(e)All statements and... shall be posted on the State Website expeditiously and prominently.”**
18. **“(f) The office shall be responsible for the publication of the notice of availability...”** should be changed to **“(f)The office..... AND BY POSTING PROMINENTLY ON THE STATE WEBSITE”**
19. (g) add **AND BY POSTING PROMINENTLY ON THE STATE WEBSITE”**
20. (i) shall commence as of the date notice of availability of the draft statement is initially issued”
Insert **AND POSTED PROMINENTLY ON THE STATE WEBSITE**
21. Section 12. The majority of the task force is Lingle appointees. Lingle appointees need to be the minority. There should be an equal number of Task Force members from each island appointed by each island's county council. Lingle's guys can come to meetings in case anyone wants to ask them a question but don't get to vote.

Dan Cohen
645 Hoene ST
Makawao, HI 96768

808 572-0300

Honorable members of the twenty-fourth Legislature:

Mahalo for the opportunity to present my views and concerns on this proposed legislation.

I am opposed to the inter-island ferry service to being allowed to operate prior to an environmental assessment.

Additionally, I take exception to the current proposal before you to allow one of the prime PROponents, Governer Lingle, to make and apply rules to allow an interim service pending the statutory environmental assessment. This is like putting the mongoose in charge of the chicken coop.

Laws are to be equally applied, and not "side-stepped" or "cherry-picked" by a senate bill, in this instance, to allow interim inter-island service BEFORE the court-mandated environmental assessment.

This seems all too similar to the period when Ms. Lingle threw her full weight and support behind the Maui Airport runway extension, trying to force it through, in spite of serious and well-voiced opposition from Maui's citizens.

I believe the forcible entry of the not-so-super Ferry into outer-islands is just plain wrong.

Thank you.

Dan Cohen



October 22, 2007

Aloha Senate Committee Members,

I am submitting this document as my written testimony into the Super Ferry issue and request for public input by the Senate committee at hand.

My name is Michael Cummings, of 1433 North Kilou Place in Wailuku, Maui, HI. I am a Maui Fire Department Captain, a surfer and a small business owner (internet based). I have been a permanent resident of Maui since 1968, with youthful days spent in Honolulu, Hilo and San Diego, CA.

In my time on Maui, I have never seen such an issue so polarize people within the State as the Super Ferry has. When the startup news was first announced in 2004, I initially thought this would be great, I can pack my boards and go to surf on Oahu and as I a small business owner I could pack my clothing and go do some Blaisdell trade shows. I felt I could be accepting of this form of inter-island travel and look forward to its arrival. However, over the next few months and years I noticed the slick campaign by Super Ferry to avoid any type of environmental review. This included the heavy lobbying of the legislature to kill all bills related to environmental review, the snub to all the county councils requesting that a review be done before startup, the snubbing of the State Supreme Court, the snubbing of Judge Cardoza, the snubbing of the people of outer islands. Also noted was the race card played by Super Ferry public relations, pitting locals against haoles and old timers against newcomers.

I am asking that the following suggestions, ideas and thoughts be considered in your decision making process.

1. I am requesting that this Senate committee not recommend a special legislative session be called for to enable the Supper Ferry company start business before the finish of the environmental review process. Their expressed naïveté as to whether they needed an environmental review is especially troubling as it implies that they are either liars, extremely unprofessional, uneducated or simply feel that they are above the law. Super Ferry has a very real involvement in where this issue stands today and should start doing their part in making things right. No entity should just say, "in our opinion, we felt our project didn't require an environmental review" and act like they aren't responsible. They are responsible, along with the DOT and the Governor. HRS 343, requires you to document why you feel your project is exempt and that response has to be filed as a public document. Who has that document, Super Ferry executives, Governor Lingle, Department of Transportation-Harbors, Office of Environmental Affairs? Someone on your committee needs to find and ask for a copy of this document.
2. I am requesting that Super Ferry follow the letter and spirit of the law in regards to HRS 343 and perform a complete environmental assessment and subsequent required environmental impact statement as ordered by the Hawaii State Supreme Court. Instead of doing what is considered "fair", do what is "pono" or right. We the people of Hawaii

are the stewards of this great state and we are entrusted with the responsibility to ensure that all aspects of life are treated “fairly”, not just business.

3. Initiate a drug interdiction program, dogs, security, vice officers, which puts pressure on potential drug couriers traveling in both directions. ” Ice” has become a huge issue here in Hawaii, touching just about everyone and I believe airline security has curtailed that mode of moving drugs via air courier. The personal vehicle, with camping gear and surfboards, traveling aboard Super Ferry, offers the perfect camouflage for true criminal intentions.
4. Ensure that a thorough inspection of possible hazardous materials cargo is in place to check for LPG tanks, fumigation cylinders’, fireworks, explosives, corrosives, pesticides, etc... and that all Federal and State regulations are followed as to any transportation on a passenger carrier. I work on the hazardous materials team for Maui Fire Department and would like to feel confident that every thing possible is being done to ensure illegal hazardous materials are not being carried on Super Ferry.
5. Initiate an “invasive species” program to check for plants, animals, soil, insects, etc. I acknowledge that yes, Young Brothers and Matson have most likely contributed to the invasive species problem. With that in mind, is it right to just blindly compound the problem by adding another source of moving around invasive species. This is a focal point where we can start programs that scrutinize all sea carriers and air carriers. The movement of people and personal vehicles increases the problem significantly as soon as the human element is thrown into the equation. Humans have natural tendencies to be curious, to explore, and given the opportunity, some people will do exactly that.
6. Initiate a “natural resource” check for large quantities of natural flora and fauna, rocks and plants, fish, opihi and tako, etc. Perhaps develop legal quantity guidelines for travelers to follow. Encourage a program where potential passengers are educated as to limits placed on the collection and possession of the above. I myself respect the locals of East Maui and their resources and I am absolutely aware of how much opihi I pick and who I pick it with. If guidelines are not in place, I assure you, there will be many confrontations between Oahu urbanites and the East Maui Boys.
7. Put in place safeguards for marine mammals, specifically whales and follow the advice of the experts. Super Ferry’s in house “avoidance policies”, “limiting collateral damage”, “doing our best” are just not good enough. At some point in time mankind has to put himself second to the immediate concerns of other forms of life, who we may encounter while traveling within their habitat and it just may be that Super Ferry will have to slow down. I’m not exactly known as a “tree-hugging, left wing environmentalist”, but I do have a tremendous respect and consideration for life in different forms, other than human.

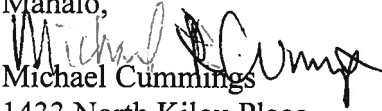
That being said, I look forward to seeing the whales again this winter from my home on the Waiehu coastline, as they provide numerous hours of enjoyment. Based on 20 years of observation of whales from my home two blocks from the beach, my gut feeling is this. I am unsure how the Super Ferry will avoid whale strikes at 40 knots, it’s just too fast. Whales generally move in one direction while moving up/down our coastline, but

they also reverse direction or just stay in one place and cavort, so there is no way to consistently predict where they are, where they will be or how long they will stay submerged. On a clear, glassy day with smooth water, it would be more probable to see whale activity, but on a 10-20+ mph trade wind day, it will be extremely difficult to pick up any signs of whale activity, due to the whitecaps and spray.

8. Ensure that checks and restrictions are in place, so that young runaways on all islands are not allowed to travel freely without proper permission and identification. Also ensure that the movement of underage youth and children in the company of non-related adults is taken into consideration.
9. Initiate adequate traffic studies to ensure that their truly is not going to be congestion and problems with sudden discharges of traffic into Kaahumanu Avenue. It would seem logical that based on population demographics, that the island of Oahu would be the higher percentage of SF users rather than the outer islands users traveling to Oahu. The outer islands have limited roadways to absorb the traffic, therefore the impact is more sudden and more noticeable.
10. While I am not a big supporter of conspiracy theories, I do think it is extremely important that Super Ferry be forthright in expressing any implied, possible or intended use of the Super Ferry by the military. The military utilizes many types of explosives, RDX for example is a highly toxic component of plastic explosives, detonators, high explosives in artillery rounds, Claymore mines, and demolition kits. Also at issue is depleted uranium rounds utilized throughout the Middle East conflict areas by the military. Is there even a remote potential for vehicles, equipment and soldiers to possibly utilize the Super Ferry as a transport vessel or deployment vessel (WestPac Express) How do we ensure that the vessel is free and clear of all chemical or rad contamination, when our families travel the next day on Super Ferry. Remember, both Garibaldi and Lehman have publicly contradicted each other when asked about this possibility of moving the Stryker Brigade.
11. Perform an investigation into who made the decision to exempt this project from environmental review. If a Department, a person, an agency or a Governor was the actual entity to give the green light, than that entity should be held responsible to the most stringent punishment possible. There is no excuse for letting this debacle occur. Most people would get fired from their jobs in a major company for giving the okay to this project.
12. Lastly, the impact of the Super Ferry will be noted again in the future, under the Kahului 2030 harbor expansion plan. The plan indicates the movement of the Super Ferry and the cruise ships to the west breakwater, which will eliminate three recreational surf spots via dredging and impinge upon another surf spot via a new breakwater. These surf sites are extremely significant historical, cultural and recreational natural resources and should not be eliminated under any circumstances. The surf sites are utilized by thousands of adults, youth, children, male and female. I personally have been surfing these surf spots for 40 years now. This will be a HUGE issue when the 2030 Kahului Harbor expansion project is made public and it is important to come up with other solutions to the DOT proposal.

Thank you for coming to Maui and asking for our input to this extremely controversial subject and thank you for letting me testify in writing. The Governor, Super Ferry executives and some legislators view the glass half empty and express concern that this issue has been detrimental to our State from a business perspective. Perhaps we could view the glass half full, a reminder to the world that the people of Hawaii are concerned about our surrounding environment and will taken extreme measures to protect and preserve.

Mahalo,

Handwritten signature of Michael Cummings in black ink, written over the printed name.

Michael Cummings

1433 North Kilou Place

Wailuku, HI 96793

244-1659

e-mail: mauistyle@hawaii.rr.com

October 22, 2007

Dear Senators,

I beg you to listen to the people of these islands. The majority of the citizens are asking that the Superferry wait for the Environmental Impact Study to be conducted before being allowed to set sail again. The damage that could possibly be done if the Superferry sails before the EIS is completed can not be reversed! Our islands' ecosystems are so fragile and it is up to us to protect their wellbeing. We are not asking you to banish the ship altogether, just uphold Judge Cardoza's ruling and make the ship wait for the EIS.

The first whale has already been spotted off the west side of Maui, and many, many more will be coming. The whales cannot speak for themselves so it is up to us to protect them from the ship until the EIS proves that it is or is not dangerous.

Please understand that The Maui Invasive Species Committee works hard every day to banish invasive species from our island. By allowing the Superferry to sail without the EIS, we are willingly allowing invasive species to come to our island! The EIS must be conducted to ensure that a system is set up properly to eliminate the spread of invasive species.

Please, the people of these islands elected you to be our voice. We are asking that you listen to the majority of us and require an EIS before the Superferry is allowed to set sail again. Please, be our voice when our islands need our help most!

Mahalo,

A handwritten signature in cursive script that reads "Jennifer Dempsey". The signature is written in black ink and is positioned above the typed name and address.

Jennifer Dempsey
24 Makalani Place
Makawao, HI 96768
808-572-1625

I think the super ferry should be operating immediately while the EIS is being conducted.

The ferry represents progress in Hawaii's transportation industry.

If problems arise, we can work to solve problems. In the area of undesirable pests, now in existence, such as the nasty gall wasp that has destroyed the false wile-wile, and another being the melodious coqui frog - studies are being made for solutions to solve these problems. If we have new problems in any areas, we can work towards solutions to solve the problems.

Let's work for progress as this alternate form of travel represents. Let's work for progress, let us not stagnate.

Mabel J. Donae

TESTIMONY OF MICHAEL J. DUBERSTEIN

Earlier this year I prepared a study of traffic-and-terminal related impacts of various ferry systems with emphasis on mandated traffic and terminal mitigations.

My report studied 47 existing and proposed ferry systems:

United States ferry systems	35
Canadian ferry systems	4
United Kingdom ferry systems	4
Hamilton, New Zealand	
Indonesia	
Oslo, Norway, and	
Guyana.	

Twenty one ferry systems were currently in operation, twenty four were proposed, and two were defunct; twenty seven can be classified as "fast ferries. Environmental assessment and impact studies—under a variety of titles based on the jurisdiction—were found for all except five of them, and most had both significant traffic and terminal-related issues with specific mitigation recommendations; all but four held public scoping sessions prior to the ferry start-up.

In addition, as an addendum because it's sited specifically by Hawaii Superferry as a model for traffic forecasting of trip generating, I looked at The Great Lakes Lake Express which was covered by NEPA rather than state assessments. Such studies might have helped avoid some of the severe traffic, terminal and revenue problems that turned up in that system's early operations.

I also looked at the environmental assessment process in a number of states that also have extensive ferry systems. Point blank, no state has ever driven such a stake in the heart of its assessment laws as you propose in this abomination. Mind you, I spent a decade as a researcher, legislative assistant and legislative analyst in the U. S. Congress.

Finally, the Governor says following our environmental laws will drive away business. Nonsense, because businesses will go wherever they can make money. But if you pass this abomination, I assure you the word will go out to all who hold the environment sacrosanct to stay away from here, don't visit Hawai'i until we are healthy again.

Malama pono

**Michael J. Duberstein
34 Iliwai Loop
Kihei 96753 891--0597**

LOCATION	PROJECT NAME	RPT DATE	PROPOSED	FERRY TYPE RUNNING	FAST	EIS YES	EIS NO	SCOPING HELD	TRAFFIC ISSUES	TERMINAL ISSUES
Alaska	North Road Terminal	2007	X		X	X		X		X
	Cook Inlet Ferry	2007	X		X	X		X	X	X
	Anchorage MSB Ferry									
	Petersburg Terminal Ferry	2006	X		X	X		X	X	X
	Juneau Access Ferry	2006								
	Auke Bay Ketchikan	2005	X		X	X		X		X
	Berth 3 South	2005	X		X	X		X		X
	Mitkof Wrangell	2005	X		X	X		X	X	X
	Prince Rupert	2005	X		X	X		X	X	X
	Seattle Colman Dock	2006			X	X		X		X
	Townsend-Keystone	2007			X	X		X	X	X
	Bremerton Bainbridge Island	2007			X	X		X	X	X
	San Juan Island	2005			X	X		X	X	X
	Mukitoo Terminal	2006			X	X		X	X	X
	Edmonds Crossing	2002			X	X		X	X	X

LOCATION	PROJECT NAME	RPT DATE	PROPOSED	FERRY TYPE RUNNING	FAST	EIS YES	EIS NO	SCOPING HELD	TRAFFIC ISSUES	TERMINAL ISSUES
California	Friday Harbor	2005		X		X		X	X	X
	Eagle Harbor East Bay	2005		X		X		X	X	X
Texas	Ferry North Bay	1992-date	X		X	X		X	X	X
	Ferry Galveston - Bolivar	2001-date	X		X	X		X	X	X
Chesapeake Bay	Ferry Task Force	2005	X		X	X		X	X	X
	Crisfield MD - Reedsville VA	2005	X		X	X		X	X	X
New York	South Terminal Staten Island	2004	X	X		X		X	X	X
	NYC - Boston Truck Ferry	2005		X		X		X	X	X
Connecticut	Long Island Sound	2003	X		X	X		X	X	X
	Long Island Sound	2002	X		X	X		X	X	X
Connecticut	New Haven CN Rochester NY - Toronto ON Intrastate Ferry	2005	X		X	X		X	X	X
	Toronto ON Intrastate Ferry	2001	X		X	X		X	X	X

LOCATION	PROJECT NAME	RPT DATE	PROPOSED	FERRY TYPE RUNNING	FAST	EIS YES	EIS NO	SCOPING HELD	TRAFFIC ISSUES	TERMINAL ISSUES
Rhode Island	Quonset Point Terminal	2003	X			X		X	X	X
Pennsylvania	Port Dover ON Erie - Cape Cod	2002	X			X		X	X	X
Massachusetts	(Falmouth) Nantucket Island Bedford Halifax	2001		X		X		X	X	X
Nova Scotia	Bedford Halifax	2007		X		X		X	X	X
British Columbia	Pacificats Gibsons Toronto Terminal	2006	X			X		X	X	X
Ontario	Dover Portsmouth Isle of Wight Gourrock - Dunoon Merak - Bakaubeni Terminal Extension	1992 1987	X	X	X	X	X	X	X	X
England	Dover Portsmouth Isle of Wight Gourrock - Dunoon Merak - Bakaubeni Terminal Extension	2005		X		X		X	X	X
Scotland	Dover Portsmouth Isle of Wight Gourrock - Dunoon Merak - Bakaubeni Terminal Extension	2006 1993 1995		X	X	X	X	X	X	X
New Zealand	Hamilton Fjord City Ferry Terminal River Services Study	1997-1999		X		X		X	X	X
Norway	Hamilton Fjord City Ferry Terminal River Services Study	2005	X			X		X	X	X
Oslo	Hamilton Fjord City Ferry Terminal River Services Study	2005		X		X		X	X	X
Guyana	Hamilton Fjord City Ferry Terminal River Services Study	2005	X			X		X	X	X
	Hamilton Fjord City Ferry Terminal River Services Study	1990		X		X		X	X	X



October 22, 2007

RE: Hawaii Superferry Special Session

Dear Senators and Representatives,

If there was ever a case for the cart about to be put before the horse, this is it. The environmental assessment process was designed to evaluate, in advance, the potential impacts of businesses such as Hawaii Superferry, Inc. and, if appropriate, put protective measures in place. The Hawaii Supreme court ruled that the superferry required such an environmental assessment (EA) and our existing laws require that assessment to be completed **before** beginning operation. To allow Hawaii Superferry to operate before completion of an EA is plain and simple backwards and, according to Judge Cardoza, puts all our islands at the risk of a "real possibility of irreparable harm." Without an EA, we don't know what the risks really are, but may I remind you that "irreparable" means permanent, forever, pa'a. Businesses come and go, but the spread of the glass winged spitting fly, fire ants, and coqui frogs will remain for countless generations. If you approve a bill to allow the superferry to operate during the EA process, are you willing for permanent damage to our islands to be **your legacy**?

Personally, I feel rather hopeless, because I think your minds might already be made up. I fear most of you will follow the Governor's lead on this, to protect your career and your own special interests. It's a sad day when our own elected representatives, who have taken an oath to uphold the laws of our beautiful state, allow their integrity to be compromised in the interest of supporting one business. If you endorse a new law to specifically permit the superferry to operate concurrently with their required EA, what kind of precedent will you be setting? Where will you draw the line when other businesses come along with their special needs and requests? Are you going to write new laws for each of them, or are you going to uphold the existing laws that are in place to protect the rights of the 'āina and of the people who live here and care for it? Please do not support **any** new legislation that will allow the superferry to operate **before** a proper EA is completed.

Sincerely,

Bill Ernst

Testimony
Tony Fisher / Pat Kean
AARP

Submission to hearing on Super Ferry Monday Oct 22nd, 2007

Tony Fisher, President of the Maui Chapter of the AARP states it is the position of the organization the Super Ferry sail while an EIS is conducted. Tony is concerned Maui Tomorrow and the Sierra Club are failing to come to grips with the impact loss of this service will have on senior citizens and physically disabled on Maui and Hawaii in general.

The AARP submits the Court did not determine a *finding in fact*, the decision by the Supreme Court of Hawaii and Justice Cardozza was centered on *public concern*.

Mr. Tony Fisher and Pat Kean have economics degrees. Mr Kean is also a licensed Nurse, has operated a commercial fishing boat for 18 years, and was employed by British Columbia Ferry Corporation for three years.

Frail Elderly, Physically Disabled, and individuals seeking medical care not available on Maui: *Tony Fisher is of the opinion the ferry should be allowed to operate in order to ascertain its impact. Mr. Fisher is worried older, infirm, and those requiring life saving operations have been ignored in this debate.* Thousands of senior citizens and physically disabled confined to wheel-chairs avoid using airlines due to difficulty obtaining an appropriate seat, or have to be carried in an embarrassing manner to one. On the Super Ferry it's a matter of taking a lift equipped van, or bus, use an elevator to the passenger deck, catch the sights, including whales, and roll off at their destination.

Economic considerations: In Sunday's Maui News the shipping lines announced a 7.5% general increase, and a whopping 15% jump for small loads. Unfortunately this is a sign of things to come. Oil price is skyrocketing and due to international events, economic expansion in China and India, a weak US dollar, and speculation it could reach \$120 a barrel by late next year. In addition **Mr. Kean who minored in History attests that America has not faced such a serious set of economic and global political circumstance since 1929-34.** US Business cycle/demographics, and sub prime mortgage bust points to a severe recession starting soon and extending well into the next decade. Hawaii's unemployment rate is going to reach between 8 and 9% by late 2011 as tourism slows. Real disposable income will be 20% lower in real terms by the same date. Any service that can save Hawaii's citizens money will be a positive.

Stagflation/ inter-island travel cost and shipping: Inflation now close to 6% per annum in real terms will pass 10% within two years and slowly diminish after as negative economic growth takes hold. As was the case between 1969 and 1981, wages and incomes will lag significantly in real terms.

In a high inflation, high unemployment environment a more efficient means of transportation and cargo shipping is a huge positive. As the President of Hawaiian Airlines, Suing Go, states: ticket price will return to pre-fare war price and a *little more* afterwards. This points to \$120.00 average inter-island fare within two years, and due to inflation over \$150.00 two years after that. Applying the same inputs the Ferry will be \$80.00 surcharge included and \$105.00 four years from now.

Maui Tomorrow and the Sierra Club have misled the public.

What the S.Club and Maui T. state.

PHD Scientists.

Whales in danger.

Negligible impact.
Nobel Laureate from the
Pacific Biological Station
Departure Bay BC states
Super Ferry poses a lower
danger due to design.

Increased Pollution.

Boeing Aircraft burn
2.5 times the fuel per
passenger mile.

Invasive Species.

UOH, NASA, NOAA all
claim weather has much
larger impact 1000's to one.

Crime/ Maui Council

Should have contacted MPD
Per Capita Maui major crime
rate similar to Oahu's. Only
Prostitution is greater (Navy)

Traffic problems.

Why did M. Tomorrow draw
on an *expert* who was never
employed by a Ferry business?
Washington State, BC Ferry,
NY Ferry, all had experts who
claim 15 to 20 min clearance.

Mr Kean contends Maui Tomorrow and the Sierra Club have been the agents inflaming the public. These professional activists have created the strife on this island by their constant misrepresentation of facts. The level of deceit has reached such a point *condemning this group publicly and removal of theirs special tax category is warranted.*

It is said ignorance of the law is no excuse. It is also true attempting to use propoganda to *enhance ignorance* should not play any role in fashioning new law. Hawaii's environmental law must be re-written. It is clear the Supreme Court on Aug 23rd 2007 expanded this law's role beyond its original intent as an avenue for sober public input. It is now a situation where individuals or businesses are considered guilty until proven innocent contrary to the Constitution. It is now a situation where mere hearsay and innuendo can be used at will by nefarious individuals, with a Maui Yesterday mindset, to create the public concern necessary to trigger an EIS. It is clear **the new law should require peer reviewed science by advocacy groups that result in finding of fact by a court, not just artificially pumped up public concern.**

Pat Kean

Kihei



808-283-3886

Background for Pat Kean

-Economics Degree Simon Fraser University

-Nursing Degree Malaspina College-University

-Served in Canadian Army in Cypress and Europe 1972-73

-Captain of a commercial fishing boat, West Coast and North Pacific for 18 years

-I am 1/8th Hawaiian with family roots on the Big Island.

I worked for the BC Ferry Corporation for three years one of my duties was traffic control.

Sunday, October 21, 2007

Hearing: Maui, Monday, October 22, 2007

Number of copies required: One (1) for each committee member

I am submitting this letter to the following committees, to show my support for holding a special session of the Hawaii State Legislature to pass a bill to permit the Hawaii Superferry to remain in operation while an environmental assessment is being conducted:

Committee on Judiciary and Labor

Senator Brian T. Taniguchi, Chair

Senator Clayton Hee, Vice Chair

Committee on Transportation and International Affairs

Senator J. Kalani English, Chair

Senator Mike Gabbard, Vice Chair

Committee on Energy and Environment

Senator Ron Menor, Chair

Senator Gary L. Hooser, Vice Chair

My name is **Kathleen Fukushima**. I'm a 33 year resident of Maui, a 17 year retired airline employee, and a hopeful Superferry employee. I am here to show my support of the legislature's proposed bill in favor of the Hawaii Superferry.

Today I am saddened to be part of a divided state and community over such unreasonable issues that have been raised by the opponents of the Superferry. Now these critics want to make sure that if this bill is passed that such restrictive measures are put on the Superferry and it's passengers that our visitors from other islands will not be able to move about freely and enjoy the natural resources that belong to every resident of Hawaii.

The HDOA, due to shortage of manpower, has had to rely on the honor system for airline passengers to report any possible invasive species they may have brought in. Other modes of transportation such as barges, cruise ships, and private boats have no policies in place to protect against invasive species. The increasing number of these vessels with their dangerous propellers, including the whale-watch boats which are traveling in densely populated whale areas, cause more irreparable harm to whales than the Superferry's jet propulsion system would.

I ask the Legislators today to look at the whale avoidance and invasive species policies the Superferry already has in place to prevent harm to our environment. The company will continue to study and train us in these areas as new information arises. Their training has been exceptional so far.

Our environment is our biggest asset especially as it relates to our tourist industry. None of us want any harm to come to any part of it. I trust that the Legislators will listen and act according to what the majority wants, and I think the polls and the public support for the Superferry have made it clear where the majority stands.

I am proud to stand before you as not only a supporter of the Hawaii Superferry, but also as a part of a great team of people who have worked very hard to make this a company that cares about the environment, it's community, and it's employees.

Kathleen Q. Fukushima
319 Liliuokalani Street
Pukalani, Hawaii 96768
Tel: 808 264-0536

Aloha

My name is Pete Gapero

I'm strongly support the HSF.

I urge Governor Lingle and the special session of the Legislature to allow the HSF to operate while an EA or EIS is prepared.

First of all, I was lucky enough to travel on the superferry to Oahu during their promotion. I drove my pickup onto the superferry. What a great way to go. Every passenger enjoyed themselves.

Arriving on Oahu, I drove straight to Kalihi and ate my favorite food—Filipino plate lunch! Then I filled up my tank with cheap gas!

Next day I came home—What a great time I had.

What a way to travel and see our island state!

I love the ocean. I'm a paddler. I've done the Molokai Hoe several times. I have a one man outrigger that I regularly paddle in the Kahului Harbor. At least 3-4 times a week. One day I'd like to compete in one man races on Oahu. I could load it on my truck and enjoy the ride! On a serious note, when a ship comes into the harbor whether it be a barge, cruise ship or anything that's bigger than me---I get out of the way! Safety first in the ocean. Since 911 --it's the law to stay away from ships. Everybody knows that! The Kahului Harbor is big enough for everybody.

Lastly, I'm Hawaiian-born and raised on Oahu. My mom is pure Hawaiian - born and raised on Maui. I have family throughout the state. It's disturbing to me that a handful of transplants want to dictate choices especially when it comes to transportation between our islands. I don't need a Hawaiian practitioner to tell me about Hawaiian culture. Our culture is about the ocean and sailing. I live on Hawaiian Home lands. I also served my country as a Marine in Viet Nam.

The superferry is a great asset to the state of Hawaii in many ways. It would be a shame to see it go away. It's sad that a few have caused so much division in our state. This is not the Hawaiian way.

We need to do the right thing—Pono

I urge the Governor and the Legislature to allow the superferry to continue service.

It's what the majority wants!

Let's get the superferry back in service !

Mahalo

Pete Gapero

21 One Malia Way

Wailuku, HI. 96793

808 7608336

Aloha

My name is Elisabeth Gapero

I'm here today to strongly support the HSF

I urge Governor Lingle and the special session of the Legislature to allow the SF to operate while an EA or EIS is prepared.

I urge you to protect our jobs.

Protect the people of HI from this hysteria.

This controversy is tearing our state apart. We are one state—one ohana.

I was born on Oahu. I have family & friends on Oahu. They're not coming here to rape and pilferage our island!

Recent letters to the Editor/Maui News express concern about Oahu crime, traffic, drugs or homelessness that the Superferry will bring over here ----I have a News Flash -----we have our own already.. along with invasive species! Can't blame Oahu for everything!

Isaac Hall presented the 29 Amendments to the Legislature last week. No transportation provider including current airline operations could operate under those ludicrous proposals.

For over one month in court hearings before Judge Cardoza these proposals were hashed and re-hashed for what seemed like forever.

This controversy is pivotal to Hawaii's tourism industry. The world is watching.

We don't need a bigger Black eye !

Let us have HSF back. Let us have our jobs back. Let's go and have some much needed Fun!

Our state is amazing to see from the relaxing ride that the SF has to offer!

In closing -

To Oahu—please forgive the few here on Maui that we have to put up with!

We're not all lunatics here----come visit!

To the Governor —I agree with you and support you wholeheartedly.

The Legislature—I trust you —We voted for you so you could do the right thing for us—the majority .

May the HSF Sail!!!

Mahalo

Elisabeth Gapero

21 One Malia Way

Wailuku, HI 96793

808 7608336

Testimony on Hawaii SuperFerry Bailout Bill

Gregg Haines, 2955 Kailiili Rd., Haiku, HI. Phone: 572-8605

Thank you State Senators for visiting Maui to hear our concerns about the SuperFerry Bill.

My name is Gregg Haines, I am 51 years old, born, raised and lived all of my life here. I have seen this island change drastically over my years and have finally experienced enough of big business, and big money moving in and doing whatever they please.

Calling a special session of the Hawaii Legislature to bail out the Lingle Administration's – Hawaii SuperFerry mistake, is an even bigger mistake. The mistake made by Lingle's Administration appears to have not been made out of ignorance of the law, but rather with full knowledge of it, and intentional. This is an impeachable offence.

Making an action legal after it has already been determined to be illegal by two courts (one of them the Supreme Court) in Hawaii is wrong. We might as well not have any environment protecting laws if they will be negated on a whim.

The Lingle Administration contests that complying with our environmental laws, will discourage new businesses from coming to Hawaii. Businesses that are irresponsible and don't care to follow procedures that help keep Hawaii's fragile environment intact, are not welcome here. If we make exceptions to the rules for this business, then this action will tell all big business that exceptions will be made for them as well. Environmental Law will become useless!

I realize that the State of Hawaii will possibly lose approximately \$40 million if the Hawaii SuperFerry is not allowed to operate. I would rather pay for the 'mistake' in cash now, rather than paying for it in corrupting our environmental law and causing much more costly problems in the future.

I have spent many hours reading this Bill and have found many flaws in it.

First of all, this Bill is 50 pages long, and to analyze it (to make sure it is viable) will take weeks. My guess is that the Lingle Administration will want to rush it through and put a deadline for enactment. Rushing it through will be irresponsible.

In the first few pages it states that both during and after the EA and/or EIS is being compiled, the SuperFerry will be able to operate. This means that if it is found to be undesirable, it will not be able to be stopped. It indicates that any of the measures listed later in the Bill to help satisfy environmental concerns, are not intended to be, and will not be legally required to be, implemented.

The make up of the Task Force mentioned in the Bill (Section 12) is not representative of the neighbor islands. Five of the members are Lingle Administration or SuperFerry personnel with an additional two members from Honolulu county. That leaves only six members from the neighbor island counties. The Task Force should be made up equally across the four counties, appointed by the respective county councils, and have more power to shut down operations if concerns are not met.

Unfortunately, if this Bill is passed, I see many enflamed citizens willing to break the law in protest, when the vessel tries to enter the neighbor island harbors.

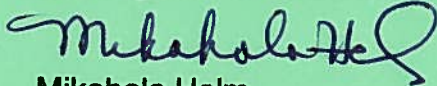
Please do not make this bill Law!

October 22, 2007

Aloha kākou,

My name is Mikahala Helm. I am born and raised here on Maui and feel very deeply about the importance of taking care of Maui and all of our Hawaiian islands. I am here today to personally thank our Senators for reaching out to our communities here on Maui, on Kaua'i and on Hawai'i. Throughout the past several years, I have supported the need for an Environmental Impact Statement (EIS) for the Hawai'i Superferry. I am against the Superferry operating while the EIS is being prepared.

Please do not have a legislative intervention of passing a special session bill to allow the Superferry to operate while an EIS is being done. We have a lot at stake and a responsibility to take care of our 'aina and to let our islands thrive. The decisions of today will be our legacy to our mo'opuna. Please carry the message of our voices...mahalo nui.

A handwritten signature in dark ink, appearing to read 'Mikahala Helm', written in a cursive style.

Mikahala Helm
2493 Vineyard Street
Wailuku, HI 96793

Ph. 242-8183

Aloha Representatives,

Thank you for the opportunity to participate in this unprecedented and highly scrutinized event.

Here are my questions;

I thought that part of the concept of representative government was to elect competent and responsible representatives who would and could make educated and informed decisions for the public, who in most important issues do not have the time or resources to be fully educated and informed. Do you feel pressured to green light HSF because a majority of the public responses to unscientific questioning favor this environmental end run, even though it is highly probable they do not know or understand all the pertinent facts and issues?

If you allow HSF to operate during the EA or EIS, how will you know what the base-line or prior use and abuse of the environment and infrastructure was, in order to compare it to the use and abuse after ferry customers arrive?

In particular for my immediate community, visitor ocean activities, can you tell me which of our beach parks are already in need of up-grading due to current levels of use? For example I visited many of the South Maui ocean recreation areas the past couple months and found Ahihi cove/bay to be over-run with visitors in late Sept, Makena Landing to have an overfull parking situation last Thursday and Saturday mornings and know from years of experience that Ulua beach parking is full many mornings of the year, even in this the slow season. If you study after the ferry is operational, the results will be the same but you will not know how many non-ferry recreators have been displaced.

With regard to vehicular traffic, how will a study of roadway usage tell us if there is increased congestion if we don't study it before the extra cars from the ferry are using those roads. Will monster trucks with illegal tires and suspensions bring dirt bikes and ATV's to crowd the limited legal motorized recreational areas, and probably many illegal areas?

I already know I must wait until 10-ish to head to Lahaina, and return before 3-ish, due to congestion. When will ferry off loaders be on the road to Lahaina, closing that window of opportunity?

If I move to Kauai, how does the time of off-loading mitigate the unreasonable traffic situation into and out of Lihue? Also, returning to Oahu after dark seems to indicate that the proposed whale avoidance policy is not really a whale avoidance policy. Do you think whales never move between islands at night? How would you know this if we don't try to study it first?

In order to stay within my 2 minutes, I will not delve deep into the unsavory coincidences of the Army not following their Federal EIS laws with respect to the stationing of the Stryker Brigade in Hawaii, the Maritime Administrations not following their Federal Laws with regard to EIS on the Federally Guaranteed loans for the construction of the ships and The Lingle Administrations not following our States Environmental Protection Laws with regard to the harbor improvements? If you have not investigated the contradictory and interest conflicting nature of comments and actions by the major players in all these and other related illegal decisions, you are not really educated and informed representatives.

Mahalo for your time and serious consideration to not circumvent out very important Environmental Laws!

Steve Hensley,
Kihei, HI

When I first heard about the Superferry I thought it was a really cool idea, but that was before I found out they were allowed to operate without an EIS.

OCTOBER 11 HONO ADVERTISER:

State Senate Majority Leader Gary Hooser said "It's clear to me that the Lingle administration either made a conscious and willful choice to circumvent the law or they committed a huge blunder in granting the exemption." "And I, for one, am not willing to validate that decision by supporting a special session."

Rep. Lyla Berg said the questions for Lingle and Superferry are more about accountability than assigning blame. "I think we have to look at where the responsibility lies," she said.

Lingle refuses to be held accountable. The law is intended to apply to all people, the minority as well as the majority, to Joe and Jane Citizen as well as the Governor. Lingle has set an unacceptable example and has basically said don't do as I do, do as I say.

Adding insult to injury, the Governor now wants her special session to legitimize the laws and rules she circumvented illegally, and it looks as if she may get her wish. It has come to light that substantial contributions were made to her campaign by Superferry officials, family members and friends. If it looks fishy and smells fishy it's probably talipia. Lawmakers need to conduct an investigation into those contributions. Lingle hasn't acknowledged the Supreme Court ruling that her decisions were in error and her administration has not explained its legal justification for the EIS exemption.

The government is set up with three branches for a reason. The executive and legislative branches combine to make the laws and the executive and judicial branches combine to enforce the laws. In this instance the executive branch acted as judge jury and executioner until the Supreme Court and Judge Cardoza knocked them down with a one-two punch. They refuse to take their lickins' and continue to stomp on with their "Were going to make this happen wether you like it or not." attitude.

I am annoyed that none of the 29 concerns presented by the Maui group were written into the bill. Hopefully some of you will add some or all of those concerns as amendments to this Bill.

I can understand why people on Oahu would want to visit Maui and Kauai. One thing that concens me are all the people I have seen on the news and quoted in various papers saying they want to go camping on Maui. Do they know that you need permits to camp here? You cant just load up the tent and the ice chest and the kids and hop on the ferry and drive off to the the nearest beach and set up camp.

Another concern is this mentality I have been hearing that everything on all the islands belongs to everyone. Does that mean that I can round up a couple of my buddies with pickup trucks go to Oahu and load up with sand or dig up some palm trees to bring back? That is disturbing.

Those and many other issues need to be addressed and we on Maui are trusting you legislators to remind the governor that she works for us and to insure our beautiful island is not damaged by unregulated Superferry operations.

Mahalo
Kenny Hultquist
POB 1121
Lahaina 96767

THE SENATE

THE TWENTY-FOURTH LEGISLATURE

COMMITTEE ON JUDICIARY AND LABOR

Senator Brian T. Taniguchi, Chair

Senator Clayton Hee, Vice Chair

COMMITTEE ON TRANSPORTATION AND INTERNATIONAL AFFAIRS

Senator J. Kalani English, Chair

Senator Mike Gabbard, Vice Chair

COMMITTEE ON ENERGY AND ENVIRONMENT

Senator Ron Menor, Chair

Senator Gary L. Hooser, Vice Chair

DATE:

Monday, October 22, 2007

TIME:

3:00 p.m.

PLACE:

Henry Perrine Baldwin High School Auditorium

1650 Kaahumanu Avenue

Wailuku, HI

To the Chairs, Vice-Chairs and members of the committees:

I want to express my gratitude to our Senators for taking the time to travel to each of our counties to hear the concerns of the neighbor islanders. I know these hearings involve a great deal of time and tedium for you, and I admire your fortitude in committing yourself to this in order to hear our concerns and criticism.

I am shocked by the weakness of the so called environmental portion of this bill. I'm referring to part II section 4 of the bill which designates the governor as the decision maker and executor of the rules regarding the impacts of the ferry operation and the mitigation of those impacts during the period when the ferry EIS is being conducted. If you look on page 13 of the draft legislation there is a list of 9 items the governor "SHALL" address.

First: the list of areas of impact is incomplete and should include at least one more item, - which is economic impacts and benefits to local businesses (particularly those in the vicinity of the harbor) from increased car and foot traffic and congestion.

Second: the "environmental" rules in this statute (I'm using that term as defined on page 17 in the bill to include, human impacts - economic, cultural, social, etc as well as traffic, invasive species, marine mammal impacts and so on) are as weak as they can

possibly be and still be included in the bill. By giving the governor the authority to establish and enforce the guidelines, the legislature and this statute make a shocking, and shameful political punt to her with regard to ANY environmental protection.

The ferry should be required to follow restrictions similar to what states are now requiring for cruise ships. As the staff person who served the Maui Mayor's Cruise Ship Task Force, I researched legislation in the states that had environmental laws regarding cruise ship operations. Alaska and California both have detailed and specific environmental standards that the cruise ships must meet and the consequences for failing to meet those standards, which are written directly into the statutes. I have provided copies of those five California statutes so you can see what I'm talking about. These are clear laws and they are very simple. They state explicitly what the cruise ships may not do, and establish fines for the violation of these laws.

The guidelines for the operation of the ferry during the environmental review process should be laid out in a similar clear concise fashion. The statute should be written in SPECIFIC DETAIL and local, regional, national and international experts should be extensively consulted and involved in this process.

Each specific invasive or damaging species for example, coqui frog, fire ants, mongoose, many forms of limu, miconia and a host land plants should be specifically addressed one by one in the statute. For each species this statute should give a detailed description of the potential impacts if it spreads, the ways it is expected to be spread or transferred between islands (which are already widely known among experts as well as residents). The statute should also include specific measures that HSF is REQUIRED BY LAW to take for preventing their spread. Since most legislators don't have the expertise to write these details, they should convene a body of experts to assist them with this. This section of the bill should be drafted by a panel of acknowledged environmental experts in the fields of marine mammalian biology and protection, invasive species preservation,

For example, with regard to whales several studies of the impacts of large ship traffic have been done. These studies agree that 13 mph is the maximum safe speed for large ship traffic with respect to whales – particularly in highly populated waters such as the Hawaiian Islands Humpback Whale National Marine Sanctuary (HIHWNMS). I'd also like to point out a long term study done on whale survivorship in the Canary Islands where whales congregate and a high-speed interisland ferry has been in operation since the late 1990s. The study found that whale death overall, and specifically due to collisions increased more than 7 fold after the introduction of the ferries. Prior to the ferry, the locations where dead whales were found were scatter throughout the islands. After the ferries started,

Third: The task force created by this legislation is ludicrous and should have been created 5 years ago when the project was first proposed. Now it is a political "whitewash" or should I say, "greenwash" of the problem. Most of the members of the task force include state administrators or their appointees from departments that have

violated state law and are obvious supporters and lobbying heavily for the benefit of this ferry operation. It also includes the CEO of the ferry. That's absurd. He should be permitted to observe the task force activities and provide information the task force as requested, but he should NOT have voting authority on the task force.

Fourth: The bill makes minimal provisions for task force membership from the neighbor island counties which will be most highly impacted by the ferry. Right now it states that one community representative shall be appointed from each county by Senate President and one from each county appointed by Speaker). This panel should include experts in all the areas listed on page 13 of the bill – not primarily political appointees from the whose primary allegiance is to the governor and her wishes.

Finally: the details about the environmental impact statement say that it shall be made available in appropriate public offices, libraries, etc during hours of business operation. Both the draft EIS and the final version should be electronically available from the DOT web site AS SOON AS they have are complete and made available in paper copy.

I'd like to reiterate my thanks to you for your concerns about the impact of this ferry operation in our neighbor island communities, and for coming to hear us today. However, I'd also like to point out that unless you take the comments you have heard in the neighbor islands seriously, and change this bill – you will have essentially wasted our time and yours and spent valuable political capital paying lip service to us, your constituents, while supporting a heinous perversion of the law for the benefit of a single corporation and operation of dubious benefit to the people of this state.

Mahalo,

Kallie Keith-Agaran
P.O. Box 848
Wailuku, Maui, Hawaii 96793
(808) 244-8982

Amy Kenneth

As a law abiding, tax paying voter, this special session makes me angry as well as saddens me. Our state government is exhibiting a lack of respect for the law. I am asking the legislators not to "kow tow" to big business. It is irresponsible of our state governor to show such disregard for our environment, quality of life and animals that share our environment, (especially endangered mammals).

Two wrongs do NOT make a right:

To give the Superferry preferential treatment and telling them they don't have to complete an EIS is wrong.

To change the law and overthrow a court ruling is wrong.

The argument that barges and cruise ships didn't have to go through the EIS process doesn't make sense. Instead of letting another "wrong" happen, start following the law! The others may be grandfathered in, but maybe they could also be asked to go through the EIS process and make adjustments if they need to. Don't let others get away with forgoing the law!

What kind of precedent are we setting if big businesses that back government officials get laws rewritten for them? Talk about not being business friendly, my husband owns a small business and he always follows the law and spends lots of money doing so. Nobody changed a law for him or his fellow small business owners. Big business needs to follow laws as well, they are written to protect people and the environment. I believe the Superferry will not benefit Maui's small businesses.

It will be easier for drugs to be smuggled in and out of Maui. We don't need any more drugs here or the problems associated with them.

I think the homeless population on Maui will rise, as it decreases on Oahu.

I fear that Maui's natural resources will be depleted- Who will oversee that our aina is not raped and pillaged? Can we trust the Superferry to oversee this, or would that be a conflict of interest. If we hire people who actually care for our land and resources, who pays for them, the taxpayers? I'd rather use my taxes to send the Superferry away so all these problems associated with it go away with it.

TRAFFIC- isn't it bad enough already? The Superferry will make traffic even worse. City drivers will be on country roads, more traffic = more accident = more road closures. Who checks if the cars coming to Maui have VALID and CURRENT registration and insurance? We don't need more uninsured drivers on Maui.

If the unethical allowance happens, and the Superferry is allowed to operate during an EIS, how many whales need to be hit and killed before they are forced to stop running? How much damage to our island can be done before they are forced to stop running? Do they get to continue their destruction until the EIS is complete? Who will monitor the guidelines set so that the Superferry is in compliance to rules? Or does changing the law for them mean that they don't need to follow rules and guidelines as well?

Senate Public Informational Hearing – State of Hawaii – October 22, 2007

Aloha and thank you very much for providing this opportunity today to allow me to express my support for the Hawaii Superferry and for what I feel it means to the State of Hawaii and to the County of Maui.

My name is Duane Kim and I am Hawaii Superferry's Maui Manager at the Kahului Ferry Terminal. I am also one of the furloughed employees of Hawaii Superferry and I am very proud of the other 35 furloughed Maui employees who have chosen to remain a part of our unique ohana.

As one of the original launch team members of the Hawaii Superferry hired in January of 2006, I have always been and continue to be a firm believer in this company being a very unique and long-awaited transportation alternative between our beautiful islands within our great State of Hawaii. We have worked very hard with numerous entities within the government, private, environmental, and public sectors to ensure that whatever we did and whatever we do is, first and foremost, always in the best interest of the great people of our great State of Hawaii.

More so, we have worked even harder choosing and hiring employees who would be able to go above and beyond normal expectations and to carry out 110% of their duties and responsibilities to ensure the Hawaii Superferry remains a part of our Maui community and of the State of Hawaii. As I mentioned earlier, there are 35 other employees who have been working and training at the Kahului Ferry Terminal.

- Together, we have over 150 immediate family members all residing on Maui.
- Together, we have hundreds of neighbors gathering around us on Maui.
- Together, we have thousands of families and friends residing on all islands of Hawaii.
- Together, we have trained countless number of hours in all aspects of our business.
- Together, we have shared the ups and downs, the trials and tribulations, and the positives and the negatives on this very beautiful Island of Maui.
- But above all else, together, we have remained committed to share our gift of Aloha to everyone who has come in contact with Hawaii Superferry, including those supporting us and those protesting against us.

A few years ago in 2004, several of our honorable State Senators, including a few of you paneling this important public informational hearing today, were among the senators that introduced resolution SR79, which if I may quote this specific resolution, "Expresses legislative support for the efforts of Hawaii Superferry, Inc. to establish an inter-island fast ferry service. Requests the Department of Transportation to assist in the expeditious planning and implementation of the fast ferry service. Requests the Public Utilities Commission to expeditiously process any required certification of Hawaii Superferry, Inc. Requests the U.S. Maritime Administration to expeditiously process Hawaii Superferry, Inc.'s application for a Title XI guarantee commitment for the construction and permanent financing of the fast ferry vessels, and urges Hawaii's congressional delegation to request the same."

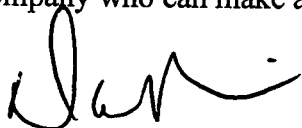
I am here today to urge you to continue to follow through your commitments your fellow senators expressed through this resolution introduced 3 years ago in 2004.

At the start of our hiring process, every single Maui resident applying for a job at the Kahului Ferry Terminal, including all 35 currently furloughed Maui employees, were asked the question, "Why do you want to work for Hawaii Superferry?" Almost all responded it was because they wanted to work for a company which was going to offer an alternative means of inter-island transportation, but all of them said that they wanted to share their aloha and be a part of company who can make a difference in improving the quality of life in Hawaii.

Thank you very much.

Duane Kim

824 Aukai Place, Wailuku, HI 96793



QUESTIONS FOR SENATORS AT SUPER-FERRY HEARING

Baldwin Auditorium, October 22, 2007

Before the Hawaii Supreme Court issued its decision in August, the question of whether an environmental assessment was needed or not was debatable. However, once the Supreme Court ruled that an EA was necessary in the super-ferry dispute, the issue was decided, to wit: If an EA is required for a certain activity—**that activity cannot commence until after the EA is completed.**

Please ask the Attorney General why was the Super-ferry permitted to break the law by the State allowing it to sail to Maui and Kauai two days after the Supreme Court's decision? The law clearly states that the Super-ferry cannot operate until the EA is completed. Why was the Super-ferry not cited for violating Chapter 343 of the Hawaii Revised Statutes? A restraining order or an injunction is not necessary to prevent someone from violating the law? **If you don't have a valid driver's license, you can be arrested for driving a car. Likewise, if there isn't a completed EA, the Super-ferry can be and should be cited for violating the law.**

Although there is presently no injunction preventing the Super-ferry from going to Kauai, will it not be violating the provisions of H.R.S. 343 if it went there tomorrow? Does the Attorney General sincerely believe that with the Supreme Court's decision and the provisions of H.R.S. 343 that the Super-ferry has the legal right to sail to Kauai tomorrow if it so chooses?

Why did the State of Hawaii threaten the protesters on Kauai with arrest and why did it marshal all of the various law enforcement agencies to help the Super-ferry violate the law by attempting to allow it to continue sailing to Kauai despite the Supreme Court's decision?

As someone who deeply loves and respects our form of government where you have three separate but equal branches whereby the Legislative Branch enacts the laws; the Executive Branch enforces the laws; and the Judicial Branch interprets the laws, passing a law after the Supreme Court has spoken will do nothing but undermine and weaken all three branches of government.

William T. Kinaka
639 Pio Drive, Wailuku, HI 96793
Telephone No. (808) 242-5421

res of Maui, Atty, environ.

My name is Anne Leete. I have followed the Superferry case closely. I am not here today to discuss the merits or shortcomings of the Superferry.

As an attorney, I am disgusted at the lack of respect for the judicial process that has led to this very hearing. I am shocked that our Governor, a former attorney on this island, would ask the legislature to convene a special session. If litigants in any other case are unhappy with the decision that a judge renders, there are remedies and processes to challenge the decision.

If ordinary people are not happy with the result of their lawsuit, they cannot ask the legislature to convene to change or modify the law in question, or to grant them an exemption to it. To do so would be absurd, and would fly in the face of the rule of law in this country. The legal process must be respected in this and every case. We are here today because Superferry and the State of Hawaii acted in violation of the law. Now, you are being asked to change that law to benefit the state and the corporation. Think about what you would do if a person asked the legislature to convene for this purpose. It would be ~~absurd~~ *ridiculous*.

If the legislature can step in and change the law whenever the state or a large corporation is unhappy with the result, then the legal process is reduced to nothing more than a farce.

Legislators before you had the foresight to enact environmental legislation for a reason. I ask you, as guardians of the public trust, to please respect the judicial process and the rule of law and do not convene a special session of the legislature.

Anne K. Leete

10-22-07

Edwin Lindsey
1087-A Pookela Rd.
Makawao, Hi 96768
October 22, 2007

Aloha Senators,

Welcome to Maui and thank you for thinking of us on the neighbor island and receiving our testimony in regards to the Super Ferry. It is sad when events such as this forces government to come out to hear the hearts and minds of your voting public. Too many times we feel powerless to participate in state government matters because of the distance and expenses involved.

As a director of Maui Tomorrow, I find it hard to believe that you are meeting to change the law because the executive branch don't like the findings of the State Supreme Court and our Circuit Court decisions. The people here have not asked for a Super Ferry. We as a community have asked for better roads, schools, programs for drug and alcohol addictions etc. The test for any good project is if it brings the community together.

However, IF we are now playing a new game and changing laws at the pleasure of the executive branch here are some of the things we need to look at in order to move things along.

1. Lower the speed of the Ferry to 25 mph. during whale season.
2. No natural or cultural resources may leave the island
3. Camping by prior permitting two weeks in advance.
4. Five new DLNR enforcement officers
5. Two new Supervisors for these officers
6. One new secretary and clerk positions for support
7. Prior conditions to search the ship and vehicles from Dept of Ag, DOCARR, and Maui Police Department to curb drugs and other illegal substances. Random inspections by these entities will insure the safety of our island.

Anything less than these agreements would be a violation of our island's integrity.

Testimony against legislation to Exempt Hawaii Super Ferry from our Environmental Laws
Kahului Maui, Oct. 22, 2007

Aloha. My name is Dan McNulty-Huffman, and I'm from Makawao. Thank you for coming today to hear our concerns.

I'd like to start by explaining that even before the Hawaii Super Ferry was proposed, I was in favor of a ferry system for Hawaii. I've used the ferry system in Alaska and Washington, and I think it could be very beneficial for Hawaii. But it has to be done right, or it could have a major negative impact on our island, and throughout Hawaii.

The Hawaii Supreme Court ruled unanimously that the Lingle administration acted improperly in exempting the Super Ferry from environmental review. After nearly a month of hearings, Judge Cardoza ruled there is a clear mandate by law that the environmental review must be done before the ferry begins operation. Passing a law to exempt the Super Ferry would set a very dangerous precedent.

The Super Ferry executives and the Lingle administration have not acted in good faith. They had plenty of opportunity to address this, and instead they tried to do an end run around the law and the public interest. The legislature should not compound the problem by "bailing them out".

Invasive species transmission, whale strikes, and over exploitation of natural resources are among the potential impacts from the Super Ferry that could have major ecological and financial consequences for the islands. We live in the extinction capitol of the United States. Our tourism industry is fostered by the remaining natural resources we have. We are in danger of killing the golden goose.

So if you do decide to exempt the Super Ferry, the bar must be set very high. Guidelines must be put in place that err on the side of over protection. Then if the environmental review shows that less stringent guidelines would be adequate, relax them at that time.

Again, I do not think the passing of any such legislation is for the public good, but if you proceed then it must include clear substantial restrictions on how the ferry operates. These restrictions should be based on the findings of the recent court proceedings. These must be put in place from the start, not added at the next session. And this administration has clearly demonstrated that it can not be put in charge of environmental and other protections when it comes to the Super Ferry. The conditions must be clearly set by the legislature.

In closing, I strongly urge you to **not** pass any legislation that undermines our current laws. But if you do, it's critical that stringent restrictions be in place before the ferry sets sail. The Super Ferry is not currently barred from sailing to Kauai, yet the ferry management has decided not to sail there due to vehement opposition. I've never participated in a protest or an act of civil disobedience. If you pass legislation that subverts our laws, it will be my patriotic duty to consider such action.

Thank you.

Dan McNulty-Huffman
85 Haele Place
Makawao HI 96768
hawaiidude@earthlink.net

October 22, 2007

Members of the Senate
State of Hawaii

Dear Senators,

I am no one special. I'm just your average local citizen whose family has lived on Maui for four generations.

It is disappointing that you are put in this position to decide the fate of the Superferry and its effects on Hawaii. I'd like express my feelings about this.

First, I do not support a special session to exempt one party from the law. Could I have a law changed for my needs if I had enough money and influence? What about the next time someone wants and exemption? I thought that laws were created for the benefit of everyone, especially those that cannot protect themselves. If an exemption is granted, it would be extremely difficult to correct violations which may include shutting down the ferry once it starts.

Second, there needs to be measures in place to protect the environment before the ferry sails. I've read that there will be searches for alien species. Is it going to be like the inspections of our cars to the airport parking lots? I think we all know how ineffective that is. There needs to be agriculture inspections similar to those for outbound mainland air travel.

Third, will there be more enforcement of state laws regarding protecting cultural and natural resources? Is the state going to provide more officers to protect our plants, limu, sand... and even ROCKS? What ever happened to the bill limiting commercial sale of opihi anyway?

I am not opposed to the Superferry per se. However, wouldn't it be wiser to resolve these issues before the damage occurs?

It's very sad that over time much of our lifestyle has been eroded by "progress" and what is "good for business". Isn't there a time when saving our way of life can trump money? In Honolulu, people seem to think that

- 2 -

May 19, 2003

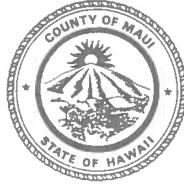
we're just a bunch of outer island "crazies". We are not. All we want is to retain as much of the essence and aloha of the neighbor islands as we can.

Thank you for your consideration.

Sincerely,

Kevin Omuro
722 Iluna Place
Kahului, Hawaii 96732

CHARMAINE TAVARES
MAYOR



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October 22, 2007

Aloha Members of the legislature. My name is Kuhea Paracuelles and I am the Environmental Coordinator for the County of Maui. Mahalo for being here today to listen to our views about the proposed Superferry legislation.

Allowing the Superferry to sail before an EA is completed is an unwise decision. It sends a clear message that circumventing the law is acceptable, not just once, but as many times as it takes to get what you want. This is a dangerous message to send to our youth who will be our future leaders.

Regarding Hawaii's business reputation, some say we appear hostile to new and innovative business opportunities. Imagine, though, what a greater positive image we could build if we showed the world that we care so much about our natural resources and cultural heritage that we take the time to properly review all new ventures, business or otherwise, to ensure that our environment is protected.

A list of 29 conditions was prepared by those who want to ensure that proper mechanisms are in place, should the Superferry sail before an EA is completed. I applaud their efforts and urge you to base your decision whether or not to grant an exemption from Chapter 343 on the Administration's and Superferry's ability to meet those conditions. Superferry officials have stated repeatedly that their invasive species policy is more stringent than what the law requires. I want to remind you that what looks great on paper does not always translate to real action. Maui Invasive Species Committee Manager, Teya Penniman, testified in court that upon her arrival for a trial run on the Superferry, her vehicle was not inspected at all. In fact, they didn't seem to be happening to any significant extent. I am happy to see that an oversight task force is a part of the proposed legislation. This group should actively participate in random visits and inter-island trips on the Superferry to ensure that what is written and agreed to on paper is being carried out on a consistent basis.

We MUST do everything we can to properly manage what's left of our native, natural resources and today we are asking that you lead the way. Thank you again for your time.

Sincerely,

A handwritten signature in cursive script that reads "Kuhea Paracuelles".

Kuheha Paracuelles
Maui County Environmental Coordinator

TESTIMONY OF TEYA M. PENNIMAN, ESQ.
RELATING TO OPERATIONS OF THE SUPERFERRY
DURING ANY ENVIRONMENTAL REVIEW PROCESS

Baldwin High School, Maui
October 22, 2007

I am the Manager of the Maui Invasive Species Committee, but I appear here today as an individual.

The legislature is in uncharted waters.

After four weeks of hearings, Judge Cardoza concluded that the likelihood of irreparable harm to our natural resources and our cultural traditions, resulting from the operation of the Superferry, warranted imposing a permanent injunction. I would like to note that at the ferry's insistence, much of the testimony was limited to considering the impacts on Maui, and thus did not fully consider the impacts statewide. Yet, Judge Cardoza ruled that the law was clear and that protection of the environment had to take precedence over economic impacts, even when those might be significant.

This is important with respect to invasive species because there are so many pests that are widespread on the island of Hawaii that threaten our health, our environment, our agriculture, and our way of life. Miconia, fountain grass, little fire ant, and coqui frogs readily come to mind. A review of Hawaii's biosecurity program by New Zealand biosecurity expert noted that "Hawaii has and continues to build a multi-million dollar coffee industry. When fire ants invaded coffee plantations in the Galapagos, the industry collapsed because no-one was prepared to harvest infested plants. There is no reason to believe that the industry in Hawaii can survive the invasion of LFA if action is not taken now." She also noted that "With increased movements and faster/higher volume vehicles, such as the super-ferry, this situation [inter-island movement of pests] is becoming worse rather than better." But she concluded, "There is an urgent need to develop cost-effective inter-island quarantine processes, even if they only address some risks to some extent."

Even though the law was clear on its face, plaintiffs in the court case were required to conduct a "mini-Environmental Assessment" to make their case. Based on that substantial evidence, the court ruled in their favor. The legislature is poised to overturn both Judge Cardoza and the Hawaii Supreme Court on the basis of the Superferry's statement that it cannot survive economically if can't operate while the environmental assessment is being conducted. But the Superferry has not provided evidence to the public or to the court to document this contention. It has stated that it could take the ferry elsewhere in the interim. There is no clear evidence that the ferry could not deploy elsewhere while the necessary reviews are completed or that it would not return. In fact, it would be easier to make necessary changes at the harbor, such as an undercarriage wash, to address invasive species issues if the ferry were not in operation. Even if the ferry could and did demonstrate the likelihood of serious economic injury, there are other means available to the legislature to address this issue besides overturning decisions by the highest court in the state. The state could negotiate some compensation or reduced taxation if the ferry agreed to return. But any such negotiation should be based on verifiable financial data from the company. Similarly, under such an agreement, the legislature could devise a plan to assist

Hello, My name is Teri Pintacura and I have a small ceramic business here on Maui. As a small business on Maui, I support the Super Ferry. Let me tell you my story: Within days of the Super Ferry taking reservations, I was making mine to be able to take my product to Oahu for The Seasons Best Craft Fair this weekend at the Blaisdell. Load the truck with product, pack the tables and the dolly and off I go to Honolulu. Ahh, but wait NOT. Some people felt that it is environmentally unsafe. The stress of having to barge over and rent a van, and make arrangements for pick up for delivery is way over the edge for me.

Now has anyone looked into seeing how many Ferrys of this type are in service in the US? The Military uses them, maybe a little smaller. I know for fact that the state of Maine has one that runs from Maine to Nova Scotia. They require a passport because they travel out of the US. Plus, they also have whale season and it doesn't seem to be a problem. So, PLEASE allow the Supper Ferry to run while the Environmental Study is done. This makes our State look very backwards in the eyes of the rest of the US and the world. We are the ALOHA State afterall... Thank You

WILLIAM L. PYLE, PE
CIVIL & AGRICULTURAL ENGINEERING
PO Box 880369
PUKALANI, MAUI, HAWAII 96788
October 22, 2007

To: THE SENATE
THE TWENTY-FOURTH LEGISLATURE
COMMITTEE ON JUDICIARY AND LABOR
COMMITTEE ON TRANSPORTATION AND INTERNATIONAL AFFAIRS
COMMITTEE ON ENERGY AND ENVIRONMENT

RE: Testimony on the Superferry Operation in Violation of the Hawaii
Environmental Laws.

Senators:

As a local Maui homeowner, father of four, a surfer, paddler, diver, and as a professional engineer of forty years experience here on the Island of Maui, I've watched all kinds of businesses come here and operate in total ignorance, arrogance and belligerence toward our island ways and our native island resources.

We now have laws in effect to try to protect against further damages such as those we all have observed in the past, and the Superferry should not be given a free passage to operate in violation of those laws.

Giving the Superferry special privilege to operate outside the laws in this manner will be a disaster. It will only set a precedent for other businesses with plenty of money to come here and expect similar special privilege from our legislature and our administration.

I oppose this bill and do not want to see it passed; it will strip the our islands of the protections that we have through state environmental review law, which was upheld in both the state Supreme Court and 2nd Circuit Court rulings.

Thank you,
William L. Pyle

A handwritten signature in black ink, appearing to read 'W L Pyle', written in a cursive style.

PHONE: (808) 573-0646, EMAIL: SYSAG@HAWAII.RR.COM

**From: Sally Raisbeck, 427 Liholiho Street, Wailuku HI 96793 808-244-9604
sallyraisbeck@earthlink.net**

October 22, 2007

Ladies and Gentlemen of the Senate:

**PLEASE DONT FORCE ME TO JUMP INTO KAHULUI
HARBOR ----
THE SHOCK COULD KILL ME!**

People on Maui and Kauai are very angry. They are very worried about the effects of the Superferry. Don't believe the spin on the polls, especially that terrible Qmark poll. The Star-Bulletin poll, done by SMS Research, showed that 70 percent of Maui respondents considered traffic, alien species, and whale strikes to be problems. Kauai was more worried about importing alien species; 74 percent thought that would be a problem. I have attached written information with the details of that poll.

Most of my life I have been very law-abiding. HRS 343 is a good law. When the governor and the Superferry broke the law, and persisted in their conduct, I lost all confidence in the executive branch. If the legislative branch condones that law-breaking, and rewards the governor and the Superferry for it, I will also lose all confidence in the legislature. What is a citizen to do, when those who have sworn to uphold the law, treat a good law as a nuisance and an inconvenience to be short-circuited for the benefit of certain interests?

There's a famous saying **DON'T LOCK THE DOOR AFTER THE HORSE IS GONE.** Doing the EIS after the ferry operation starts would do that.

As far as putting the governor in charge of so-called mitigation efforts, there's another old saying: **DON'T PUT THE FOX IN CHARGE OF THE HENHOUSE.**

Again I say,

**PLEASE DONT FORCE ME TO JUMP INTO KAHULUI
HARBOR ----
THE SHOCK COULD KILL ME!**


Sally Raisbeck

Maui and Kauai Residents Feel Superferry Effects are a Problem

A poll was done for the Star-Bulletin, using SMS Research. They polled by telephone 150 residents on each island, for a total of 600, reporting the results by island.

The questions involved whale strikes, traffic congestion, and importing non-native species. The choices for each question were "big problem, small problem, no problem, and don't know".

The results for Maui and Kauai show that about 40 percent of Maui residents consider all three aspects a "big problem", while another third consider them a "small problem". If you add those figures together, about 70 % consider each of those concerns a problem!! Traffic is the biggest concern on Maui; 77% consider it some kind of problem. Importing non-native species is next at 69%, and whale strikes are third at 68%. On Kauai the biggest concern is importing non-native species at 73 %, second is traffic, and third is whale strikes.

The results for 150 Maui residents were:

Do you consider the Superferry potentially running into a whale a problem?

Big problem, 38%, small problem 30 %, no problem 27%.

Do you consider traffic and congestion during loading and unloading a problem?

Big problem 41%, small problem 36%, no problem 21%.

Do you consider the Superferry bringing non-native species to each island a problem?

Big problem 39%, small problem 30%, no problem 30%.

On Kauai, the results for 150 residents were:

Running into a whale:

Big problem 31%, small problem 31%, no problem 35%.

Traffic and congestion:

Big problem 39%, small problem 27%, no problem 29%.

Importing non-native species:

Big problem 41%, small problem 32%, no problem 23%.

Only a minority say these impacts from the Superferry are "no problem" on Maui or Kauai. Maui is more worried about traffic, Kauai is more worried about importing alien species. About 40 to 50 percent of Oahu residents said these concerns were "no problem"

It is unfortunate that the Lingle administration cannot or will not hear the concerns of the neighbor island constituents regarding the negative impacts to our rural outer islands by allowing the Superferry to operate before an environmental impact statement has been completed. The Superferry will allow anyone from Honolulu to drive their own vehicles onto our islands, crowding our already crowded roads, using our already busy beaches, taking our very limited natural resources, not to mention the danger to whales and other marine life and the danger of invasive species spreading. The Superferry is very different from cruise ships as the patrons of the cruise ships walk off the ship, rent cars, return their rental cars, then walk back on the cruise ships having to carry whatever they gathered on the island. The patrons of the Superferry will be able to drive their personal vehicles off the ferry, gather what they need, load it into their car trunks and back seats, and drive back onto the Superferry with our limited island resources. What safeguards do we have against this from happening? Who will be inspecting these vehicles to make sure that our islands are not being ripped off of our limited natural resources. It has already happened with the three truckloads of imu rocks taken from Maui. Why is it so hard to understand our point of view? Additionally, it is not only the newcomers that are concerned with the consequences of the Superferry, many of us who are born and raised on these outer islands who use the land and its resources are very anxious about the ramifications of the Superferry .

Sharyl Seino

Mahalo State Senators for hearing Maui residents. I am Warren Shibuya a retired Maui resident. I oppose Parts I and II Bill provisions:

1) Part I. Stop Superferry operating while EA/EIS is prepared.

2) Part II, Section 3. Stop practice of continuing crowding Kahului Harbor uses, mixing hazardous and Maui Island sustaining bulk fuels and chemicals with passengers from Cruise ship and Superferry. Instead, develop separate passenger and vehicle facilities on DL&NR coral pile (west).

3) Part II, Section 4. Do not allow Governor impose Executive Order, disregarding Administrative Law provisions.

As written this Bill sets wrong Legislative standards for public respect and compliance. Bill should promote Malama Pono, demonstrate Legislature sustaining Hawaii and be an example of complying with the spirit and intent of your earlier established Law.

Redoing State Law to address premature employment lacks State Emergency status. Poor ministerial judgment caused this unfortunate problem! Nature did not cause their layoffs.

I oppose provisions perpetuating the following ministerial practices:

To: Sen. Brian T. Taniguchi, Chair & Sen. Clayton Hee, Vice-Chair.
Committee on Judiciary and Labor.

From: Darrell Tanaka
3155 Ua Noe Pl.
Haiku, Hi, 96708
808-575-2557

Re. Testimony in Opposition to Superferry Bill, Special Session, 2007, To permit the operation of an inter-island ferry service in the State of Hawaii while an environmental impact statement is being conducted, while at the same time, ensuring that there is adequate protection of the environment.

Aloha Senators,

I am testifying in opposition of the proposed Superferry Bill for the following reasons. Upon reviewing the proposed bill, I have noted in Section 4, pg. 13 beginning on line 15, an amendment is required regarding Dept. of Ag and DOCARE personnel. Suggested wording is in bold.

15)... "The governor shall also consider establishing conditions and protocols such as **allowing** department of agriculture inspectors and department of land and natural resources conservation and resources enforcement personnel **to search any vehicle, baggage, container or carry-on item, without probable cause while said items are within parking lots, staging areas, docks , cargo hold, cabin or any area belonging to or pertaining to** a large capacity ferry vessel company, as the **department head of each county** deems necessary and appropriate."....

This will deter resource abuse and insure that DOCARE officers and Ag. inspectors are not prohibited or inhibited from doing their jobs properly to ensure compliance and will be able to perform their duty within the means of their current staffing.

Furthermore, to mitigate the affects of the superferry, additional staffing is required for both departments. DOCARE required additional staffing are **three CREO III, and one CREO IV officer positions as well as two Clerk Typist III administrative staff.** Dept. of Ag requires **four Plant Quarantine Inspectors and four Plant Pest Control Technicians.** These positions fall under the Division of Plant Industry. All positions for both Dept. are for Maui only. Positions are solely for the mitigation of the increased responsibility incurred by the Departments resulting from the operation of a large capacity ferry vessel.

Sincerely,
Darrell Tanaka

October 22, 2007

To Whom It May Concern:

This letter is in regards to the ruling made by Judge Cardoza about the Superferry. I do not support a special session to discuss the Superferry. I strongly believe the Superferry needs to perform an environmental impact statement (EIS). I believe that Judge Cardoza made the correct decision that the Superferry is not exempt from the law and especially since this project is publicly funded and potentially has such broad reaching environmental and social impacts. We have learned over the decades that invasive species can become incredibly costly and really compromise the quality of life we all appreciate in Hawaii. The layer of protection offered by the EIS is critical to protect Hawaii's natural resource and cultural beauty.

It is a bad example to take such an influential large scale project and make it exempt from the law. What kind of reckless pattern are we setting for future generations? We know enough to know better.

Please uphold the law and make the people of Hawaii proud of their heritage and the natural resources that make Hawaii unique.

Mahalo,

A handwritten signature in black ink, appearing to read "Erica vonAllmen". The signature is written in a cursive, flowing style.

Erica vonAllmen

I WAS BORN AND RAISED HERE ON MAUI AND TO BE ABLE TO WITNESS A VESSEL OF SUCH BEAUTY AND PROMISING POSSIBILITIES BEING OFFERED TO OUR PEOPLE FOR OUR INTER-ISLAND TRAVELING PURPOSES IN MY LIFETIME IS TRULY AMAZING.

I SUPPORT THE HAWAII SUPERFERRY WHOLEHEARTEDLY AND HAVE ATTENDED ALMOST ALL OF THE HEARINGS THAT WERE HELD HERE IN WAILUKU. I WAS SHOCKED AND DISMAYED AT JUDGE JOSEPH CARDOZA'S FINAL DECISION.

THAT TUESDAY MORNING IT WAS A CRUCIAL ALMOST TWO HOURS IN HIS COURTROOM...SITTING...AND LISTENING AS HE WENT BACK AND FORTH VAGUELY...AND THEN THE BOMB...AFTER ALL THE STATEMENTS HE MADE...WAS DROPPED. I FELT MY HEART FALL AS HE MADE HIS FINAL CONCLUSION.

THE PEOPLE OF HAWAII NEED AN ALTERNATE MODE OF TRANSPORTATION. THE HAWAII SUPERFERRY OFFERS THE MOST ADVANCED METHOD OF TRAVEL FOR OUR OHANA. ESPECIALLY FOR THE OHANA THAT HAS A HANDICAP...AND THE ELDERLY. I OWN A HOME IN HILO...AND TO BE ABLE TO TAKE MY MOM AND MY AUNTY THERE FOR A WEEKEND WOULD BE AN IMPOSSIBILITY. THE SUPERFERRY WOULD MAKE IT HAPPEN WITHOUT INCIDENCE. AS BIG ISLAND'S MAYOR HARRY KIM STATED AT ONE OF THE HEARINGS..."AS A CHILD I DREAMDT OF A BRIDGE CONNECTING ALL THE ISLANDS..." I ALSO HAD THAT DREAM AND WE ARE SO CLOSE TO MAKING IT A REALITY. PLEASE MAKE IT HAPPEN FOR ALL OF US. THANK YOU FOR TAKING THE TIME IN HEARING ME OUT...AND FOR THOSE WHO VALUE MY OPINION...ALOHA. MY TRUST AND THE FATE OF THE ENTIRE STATE IS IN YOUR HANDS.

No special session!
Please uphold Hawaii law!

To the Senate
Subcommittee on Hawaii,
10/22/03, Baldwin Hlth.

I cannot for the
life of me understand
why the legislature
of this great state
would want to subvert
Hawaii's courts, and
~~its laws,~~ and
and the environment
which lies at the
heart of our prospects.
This would be a
very dangerous
precedent for you to
set, that money
and political
power can get away
with anything. There
is a profound
principle to be upheld
here. I am against

a special session,
but if you must
pass a bill I
implore you to
include ~~environmental~~
mitigating ~~mitigation~~
of the ~~probable~~ serious
environmental impacts
that Judge Condoes
deemed probable
in making his
ruling against the
allowing the Superfund
to operate without
an environmental
assessment.

Carol Murphy
Pukalani

573-2552

Sirna Krossell

910-4. E. Kwiak, Rd

Haiwa, HI

96708

8-20-07

Testimony regarding Special Session
of the Hawaii State Congress with
regards to Hawaii Super Ferry:

Dear Sirs:

Please do not circumvent HRS
343 to allow the Super Ferry to
operate

Please DO allow the E.I.S. to
go forward without Political inter-
ference.

My concerns are:

- A. Dead whales
- B. Impact on other Island cultures
- C. Pollution

D. Invasive species

- 1) Fireants from Hawaii Island
- 2) Mongoose getting to Kawai
- 3) Coqui Frogs from Big Island
- 4) Invasive plant species of all kinds proliferating.

E) Crime Rate Increase

- 1) Big city criminals accessing outer islands easier

F) Traffic impacts

- 1) Can outer island roads handle it?

Suggestion:

get a deferrment for the repayment of the federal loan that the State must pay back and DO THE E.I.S.

Thank you.

Sigourney Rouse
The Rouse

Rev GOV. LINBLE and THOSE in THE LEGISLATURE
DECIDING on SUPERFERRY
EXEMPTIC

ON THE SURFACE an INTERISLAND FERRY
seems to be a good IDEA, BUT THE DEEPER
REALITY is THAT PUBLIC SENTIMENT and H.R.S. CHAP
343 are BEING completely IGNORED. BY EXEMPTING
ANY MAJOR PROJECT from THE ENVIRONMENTAL
REVIEW PROCESS, HAWAII, as a STATE, sets a HORRIBLE
PRECEDENT for "FAST TRACKING" POTENTIALLY DAMAGING
ACTIONS without ^{Allowing for} a PUBLIC INPUT. BY ALLOWING THE
SUPERFERRY to be EXEMPT STATE GOVERNMENT is
CREATING an INTERISLAND FREEWAY which STARTS on OAHU and
SLOWLY CONNECTS MAUI and KAUAI and THEN HAWAII ISLAND.

as a STATE of HAWAII, DLNR - DIVISION of Forestry
CIVIL SERVANT I HAVE to SAY I'm ASHAMED to
SEE THE way THIS is TAKING PLACE and I'm ASHAMED to
SAY I WORK for THE STATE if THE GOVERNOR'S SPECIAL
SESSION SUCCEEDS in it's GOALS. I REALLY THINK Her
APPROACH of STUFFING THE SUPERFERRY DOWN THE
THROATS of THE NEIGHBOR ISLANDS is a SHAMEFUL ACT.
I'm ALSO an AVID OUTRIGGER CANOE PADDLER with
HAWAIIAN CANOE CLUB and AGAIN I'm DUMB FOUNDED
as to HOW SUCH AN ^{IMPACTED} HARBOR such as a
KAHAULOA ^{HARBOR} is supposed to be ABLE to HANDLE THIS MONSTROUS
INTERISLAND FERRY.

THE PEOPLE of MAUI have suffered a HUGE LOSS in THE
QUALITY of LIFE we used to ENJOY. I WAS BORN and
RAISED in HAILEN on MAUI and I'm SAD to SEE THE STATE
of MAUI from HOW it used to BE 20 YEARS AGO.
THE GROWTH WE'VE EXPERIENCED, HAS CHANGED EVERYTHING.

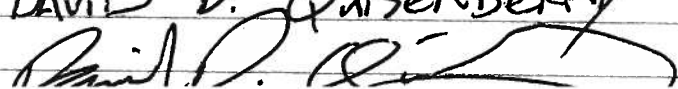
2

LOCAL FAMILIES CAN HARDLY MAKE ENOUGH TO OWN A HOME AS MAUI HAS BECOME SO DESIRABLE TO LIVE ON. I, AS A STATE NURS SPECIALIST, I WILL NEVER BE ABLE TO AFFORD A HOME AT THEIR CURRENT PRICES.

~~By~~ ^{more} BY BRINGING PEOPLE TO AN ALREADY EXPLODING ISLAND THERE CAN COME VERY LITTLE GOOD. MOST OF OUR ROADS CANNOT HANDLE THE TRAFFIC OF LOCAL PEOPLE GOING TO WORK LET ALONE TOURISTS @ PEAK SEASON AND ANOTHER 200 SOMETHING CARS AND ALL PEOPLE THEY CARRY FROM THIS ISLAND WHO ARE LOOKING TO GO HALO HALO. I DOUBT YOU'LL FIND MANY PEOPLE FROM CULTURALLY RICH AREAS SUCH AS HANA OR KAHAKULOA, OR KAHIKINI, OR KAUPO, OR KANAI O WHO FEEL THEY HAVE ENOUGH NATURAL RESOURCES THAT THEY CAN SHARE WITH FOLKS FROM OFF ISLAND WHO NO LONGER HAVE THE RESOURCE THAT THEY DO.

BY ALLOWING THE SUPERFERRY TO OPERATE WITHOUT AN E.I.S. NO ONLY ^{DO} WE SET A HORRIBLE PRECEDENCE FOR THE FUTURE POLITICIANS TO RIDE ON, BUT WE RUIN THE VERY THINGS WE VALUE MOST ABOUT HAWAII, (MAUI IN PARTICULAR). THIS IS NOT ABOUT WHAT WE HAVE TO LIVE WITH BUT IT'S ABOUT WHAT WE LEAVE FOR OUR CHILDREN TO LIVE WITH. I HAVE A HARD TIME LIVING WITH MYSELF KNOWING THAT I WORK FOR THE STATE AND THIS MAY BE EXEMPTED FROM THE LAW BY THE VERY PEOPLE WHO ARE SUPPOSED TO BE UPHOLDING THE LAW.

PLEASE BE PENO DO NOT EXEMPT THE SUPERFERRY!

Sincerely,
DAVID D. QUISENBERRY


MY NAME IS KUAMOO, CALVIN WAYNE

AND I REQUEST A FIREBOAT WITH THE
SUPERFERRY STARTED DATE 5

NO

SCARY

FERRY!

Lynda Gamblin

10/22/02